DOCUMENT RESUME

ED 176 631 HE 011 674

TITLE Hearings on House Concurrent Resolution 84. Hearings Before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, House of Representatives, Ninety-Sixth Congress, First Session on H. Con. Res. 84 (April 4 and 5, 1979).

INSTITUTION Congress of the U.S., Washington, D.C. House Committee on Education and Labor.

PUB DATE 79

NOTE 109p.; Hearings held in Washington, D.C.; Not available in paper copy due to small print and light type of original

AVAILABLE FROM Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.

DESCRIPTORS College Students; Educational Finance; Educational Legislation; Eligibility; Family Income; *Federal Aid; *Federal Legislation; Financial Support; Government Role; *Higher Education; *Parental Financial Contribution; *Student Financial Aid

IDENTIFIERS *Basic Educational Opportunity Grants; *Higher Education Act 1965; H R 84; Position Papers

ABSTRACT

The text is of a hearing before the House Subcommittee on Postsecondary Education of the Committee on Education and Labor in which House Concurrent Resolution 84 was discussed. The resolution called for disapproval of regulation pertaining to family contribution schedule for use during 1979-1980 award period under the Basic Educational Opportunity Grant award program of subpart 1 of part A of Title IV of the Higher Education Act of 1965. During the second day of the hearing it was announced that the administration agreed to submit a revised family contribution schedule which would include provisions to implement (in 1979-80) the independent student changes enacted by the Middle Income Student Assistance Act. Texts of this act and of Resolution 84 are provided, as well as statements from Ernest Boyer, Commissioner of the U.S. Office of Education; Martin Dallas, executive director of the National Association of Student Financial Aid Administration; Joel Packer, legislative director of the Office of Governmental Relations/Higher Education, National Association of State Universities and Land-Grant Colleges. Ten prepared statements, letters, or pieces of supplemental material are also included in the text. (PHR)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

AUG 1 3 1979

HEARINGS ON HOUSE CONCURRENT RESOLUTION 84

ED176631

HEARINGS

BEFORE THE

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

H. Con. Res. 84

DISAPPROVING CERTAIN REGULATIONS SUBMITTED TO THE CONGRESS ON MARCH 16, 1979, WITH RESPECT TO THE BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

HEARINGS HELD IN WASHINGTON, D.C.,
ON APRIL 4, AND 5, 1979

Printed for the use of the Committee on Education and Labor

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

HE 011 674

U.S. GOVERNMENT PRINTING OFFICE

45-933 O WASHINGTON : 1979

COMMITTEE ON EDUCATION AND LABOR

CARL D. PERKINS, Kentucky, *Chairman*

FRANK THOMPSON, Jr., New Jersey
JOHN BRADEMAS, Indiana
AUGUSTUS F. HAWKINS, California
WILLIAM D. FORD, Michigan
PHILLIP BURTON, California
JOSEPH M. GAYDOS, Pennsylvania
WILLIAM (Bill) CLAY, Missouri
MARIO BIAGGI, New York
IKE ANDREWS, North Carolina
PAUL SIMON, Illinois
EDWARD P. BEARD, Rhode Island
GEORGE MILLER, California
MICHAEL O. MYERS, Pennsylvania
AUSTIN J. MURPHY, Pennsylvania
TED WEISS, New York
BALTASAR CORRADA, Puerto Rico
DALE E. KILDEE, Michigan
PETER A. PEYSER, New York
EDWARD J. STACK, Florida
PAT WILLIAMS, Montana
WILLIAM R. RATCHFORD, Connecticut
RAY KOGOVSEK, Colorado
DON BAILEY, Pennsylvania

JOHN M. ASHBROOK, Ohio
JOHN N. ERLENBORN, Illinois
JOHN H. BUCHANAN, Jr., Alabama
JAMES M. JEFFORDS, Vermont
WILLIAM F. GOODLING, Pennsylvania
MICKEY EDWARDS, Oklahoma
E. THOMAS COLEMAN, Missouri
KEN KRAMER, Colorado
ARLEN ERDAHL, Minnesota
THOMAS J. TAUKE, Iowa
DANIEL B. CRANE, Illinois
JON HINSON, Mississippi
THOMAS E. PETRI, Wisconsin

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

WILLIAM D. FORD, *Chairman*

JOHN BRADEMAS, Indiana
FRANK THOMPSON, Jr., New Jersey
MARIO BIAGGI, New York
PAUL SIMON, Illinois
PETER A PEYSER, New York
JOSEPH M. GAYDOS, Pennsylvania
AUSTIN J. MURPHY, Pennsylvania
TED WEISS, New York
WILLIAM R. RATCHFORD, Connecticut
DON BAILEY, Pennsylvania
CARL D. PERKINS, Kentucky,
Ex Officio

JOHN H. BUCHANAN, Jr., Alabama
JAMES M. JEFFORDS, Vermont
MICKEY EDWARDS, Oklahoma
THOMAS J. TAUKE, Iowa
THOMAS E. PETRI, Wisconsin
JOHN M. ASHBROOK, Ohio,
Ex Officio

CONTENTS

	Page
Hearings held in Washington, D.C.:	
April 4, 1979	1
April 5, 1979	99
Text of House Concurrent Resolution 84	84
Text of H.R. 10854	86
Statement of—	
Boyer, Ernest L., Commissioner, Office of Education, Department of Health, Education, and Welfare	103
Martin, Dallas, executive director, National Association of Student Financial Aid Administrators	53
Packer, Joel, legislative director, United States Student Association	56
Roschwalb, Jerold, director, Office of Governmental Relations/Higher Education, National Association of State Universities and Land-Grant Colleges	62
Steele Clelia, National Coalition for Women and Girls in Education	60
Prepared statements, letters, supplemental materials, etc.—	
"Basic Educational Opportunity Grant Program," Family Contribution Schedules, article from Federal Register, dated March 23, 1979	13
"Basic Educational Opportunity Grant Program," Family Contribution Schedules, article from Federal Register, dated August 14, 1979	92
Califano, Joseph A., Jr., Secretary of Health, Education, and Welfare, letter to Chairman Ford, dated April 5, 1979	101
"Carnegie Council's Recommendations on Federal Student-Aid Programs," article from the Chronicle of Higher Education, March 26, 1979	97
Martin, Dr. Dallas, executive director, National Association of Student Financial Aid Administrators, prepared statement of	5
Packer, Joel, legislative director, United States Student Association, prepared statement of	25
Roschwalb, Jerold, director, Office of Governmental Relations, Higher Education, National Association of State Universities and Land-Grant Colleges, testimony of including attachments	35
Staats, Elmer, Comptroller General of the United States, letter from Chairman Ford, dated March 27, 1979	3
Steele, Clelia, National Coalition for Women and Girls in Education, testimony presented by	49
Vance, Marcia, director of financial aid, Vermont Institute of Community Involvement, Burlington, Vt., letter to Congressman Jeffords, dated February 22, 1979, with enclosures	68

HEARING ON HOUSE CONCURRENT RESOLUTION 84

WEDNESDAY, APRIL 4, 1979

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTSECONDARY EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2175, Rayburn House Office Building, Hon. William D. Ford (chairman of the subcommittee) presiding.

Members present: Representatives Ford, Murphy, Ratchford, Buchanan, Jeffords, and Tauke.

Staff present: Thomas R. Wolanin, staff director, Patricia F. Rissler, deputy staff director, and William Clohan, minority assistant education counsel.

Mr. FORD. The Subcommittee on Postsecondary Education is meeting today to consider a resolution to disapprove the family contribution schedule governing awards under the basic educational opportunity grant program for the 1979–80 academic year.

As chairman of this committee, I introduced this resolution because the schedule does not implement provisions in the law relating to grants to independent students.

In brief, the Middle Income Student Assistance Act enacted last year changed the way assets of independent students with families were treated in an attempt to remedy the harsh and inequitable treatment of these students under the previous law.

By protecting the assets of these students in a manner similar to the protection provided parents of dependent students, independent students could become eligible for grants more in line with their true need. It also permitted single independent students to use the first $3,400 of their income for basic living expenses; 70 percent of their income over that amount is to be contributed to education costs.

I hasten to point out that independent students are students who are not able to rely on their families to assist them while they further their education. They must meet certain rigorous standards to qualify as independent and 80 percent of them are over the age of 22.

They are generally displaced homemakers, veterans, and other adult learners striving to improve their situation through education.

The Middle Income Student Assistance Act made some 70,000 new independent students eligible for basic grants and provided larger grants for approximately 612,000 independent students.

It is unfortunate this hearing is necessary. I think that is the closest I can come to the pinnacle of understatement for the day.

The provisions I refer to were in the Middle Income Student Assistance Act as proposed by the President. They again appeared in the proposed family contribution schedule transmitted to Congress on August 14 of last year.

The administration's budget request for funds for the Middle Income Student Assistance Act included the approximately $130 million needed to implement these changes. While this Appropriations Act, as passed by Congress, contained language deferring the implementation of these changes until the 1980–81 academic year, that act was superseded by the subsequent passage of the Middle Income Student Assistance Act.

To avoid any confusion, House and Senate members of this committee and our counterpart committee on the Senate side, as well as members of the Appropriations Committees, wrote to the Secretary of Health, Education, and Welfare on February 2 expressing our clear understanding that Congress intended these changes to take place for the forthcoming school year.

Despite all this, the final family contributions schedule transmitted to Congress on March 16 blatantly ignored the law. In fact, the summary of this regulation acknowledges the changes made by the Middle Income Student Assistance Act but states, "It was decided to postpone implementation of these two changes in the treatment of independent students until the 1980–81 award period because of the need for fiscal constraint."

That translates in my mind to it was decided to ignore and to deliberately violate the law.

The General Education Provisions Act provides that Congress can disapprove a regulation within 45 days if it "is inconsistent with the act from which it derives its authority."

We meet today to receive testimony from public witnesses on House Concurrent Resolution 84, a resolution to disapprove the family contribution schedule because it is inconsistent with the law.

We have scheduled a further hearing tomorrow morning at 9:30 a.m. in room 304 of the Cannon House Office Building to hear from Commissioner of Education Boyer and from a spokesman from the Office of Management and Budget.

At this point, I will ask without objection for unanimous consent to insert in the record a copy of the letter I sent on March 27 to Elmer Staats, Comptroller General of the United States, in which we have asked Mr. Staats, pursuant to the provisions of the law, to examine the effect of this regulation and to determine if he agrees with our legal interpretation that this is in fact a rescission and therefore subject to the normal procedures for a rescission.

One must observe that it would be terribly wasteful of our time and that of the administration to have this happen, because all of the people who would have to vote out of the respective committees the resolution to rescind these funds have already indicated in writing that they agree with us on the law. If the administration wants to press that vein in a useless exercise, perhaps this is a good time to walk the people at OMB through the processes of the law and have them come to some understanding of who makes

policy in this country and that, in fact, when the Congress passes a law and the President affixes his signature to it, that does become the law of the land even in the face of "the need for fiscal constraint."

Without objection, the letter will be inserted into the record at this point.

[The letter follows:]

SUBCOMMITTEE ON POSTSECONDARY EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 27, 1979.

Hon. ELMER STAATS,
Comptroller General of the United States, General Accounting Office, Washington, D.C.

DEAR MR. STAATS: The Departments of Labor and Health, Education, and Welfare Appropriations Act for fiscal year 1979 (Public Law 95-480) provides funds for the Basic Educational Opportunity Grant program authorized by Section 411 of the Higher Education Act of 1965 as amended. The Appropriations Act also contains legislative language which states, in part, "the Schedule of Expected Family Contributions * * * shall retain the provisions relating to independent students as were in effect in the academic year 1978-79". (A copy of this legislative language is enclosed.) The effect of this legislative language was to supersede the provisions of a proposed Schedule of Expected Family Contributions relating to the treatment of independent students for the academic year 1979-80. This proposed regulation was published in the Federal Register on August 14, 1978. In particular, this legislative language would have superseded the proposed amendments to Sections 190.43, 190.44 and 190.45 of the Basic Grant regulations. (A copy of the proposed regulation is enclosed.)

Section 2 of the Middle Income Student Assistance Act (Public Law 95-566) enacted into law the changes in the treatment of independent students suggested in the proposed regulation of August 14, 1978. Since Public Law 95-566 was enacted subsequent to Public Law 95-480, it is controlling. (A copy of Public Law 95-566 is enclosed.)

In addition, in a letter of February 2, 1979, to Secretary of Health, Education, and Welfare Joseph Califano, leaders of the House and Senate appropriations and authorizing committees with jurisdiction over the Basic Grant program expressed their understanding of Congressional intent that the changes in the treatment of independent students enacted by the Middle Income Student Assistance Act should be implemented for the 1979-80 academic year. Their view is that the legislative language was intended only to assure that currently eligible students would not receive smaller Basic Grants because of implementation of the independent student changes within the budget constraints. However, since the program was managed more tightly and sufficient carryover funds are available to fully fund the program, including the independent student changes, the Senators and Members of the House believe that it is Congressional intent that these changes should be funded for the 1979-80 academic year. (A copy of the letter is enclosed.)

On March 16, 1979, the Family Contribution Schedule in the form of a final regulation was transmitted to the Congress pursuant to Section 431 of the General Education Provisions Act. The "Summary" of the final regulation says, in part, "* * * the Middle Income Student Assistance Act, Public Law 95-566 * * * made two changes in the treatment of independent students * * *. However, it was decided to postpone implementation of these two changes in the treatment of independent students until the 1980-1981 award period, because of the need for fiscal constraint with respect to fiscal year 1980 outlays. Accordingly, these two changes are not included in the 1979-80 Family Contribution Schedules". (A copy of the final regulation is enclosed.)

Note that the statement in this final regulation does not content that that language of the Departments of Labor and Health, Education, and Welfare Appropriations Act for fiscal year 1979 is controlling, and it implicitly concedes that the Middle Income Student Assistance Act (Public Law 95-566) is the applicable law. The reason presented for not spending appropriated funds pursuant to this law is "the need for fiscal constraint with respect to fiscal year 1980 outlays."

The Executive Branch has clearly proposed a "deferral of budget authority", as that term is defined in Section 1011 of the Impoundment Control Act of 1974 (Public Law 93-344). Since a special message on this proposed deferral has not been trans-

mitted to the Congress pursuant to Section 1013 of Public Law 93-344, I am requesting that you investigate this situation, exercise your authority pursuant to Section 1015 of Public Law 93-344, and submit the appropriate report to the Congress on this proposed deferral.

Please advise me at your earliest convenience of your assessment of this situation and your intended course of action.

Thank you in advance for your cooperation and assistance.

With kind regards, I am

Sincerely,

WILLIAM D. FORD, *Chairman.*

Mr. FORD. Mr. Buchanan.

Mr. BUCHANAN. Thank you, Mr. Chairman. I want to commend you first for your restraint and strongly associate myself with your remarks perhaps with a little less restraint.

I understand originally that, as HEW stated, they were following the language of the Labor-HEW Appropriations Act instead of MISAA because an internal legal opinion concluded that appropriations language controls authorization language when dealing with funding.

Since we are dealing with acts of Congress, and since the Appropriations Committee is a creature of the Congress, such a legal interpretation would elevate that creature of the Congress over the entire Congress and/or would say that a prior act of Congress controls a subsequent act of Congress.

To a layman who does not understand these weighty matters of the law, I have found that a rather startling legal opinion. Had I such a lawyer, I think I would find a new one or make him do his homework.

Second, as the chairman stated, this whole procedure should be unnecessary. The administration proposed this legislation. The Congress enacted it in the law. These provisions were a part of that proposal and of that legislation and are now the law.

Mr. Chairman, I will be again startled if Mr. Staats does not come back with the answer that indeed it does require a rescission. Even though, as the chairman has stated, the members of the Appropriations and the authorizing committee are united on this subject, if the administration wishes to go through an exercise in futility, it may.

I am still looking for a President who is sufficiently supportive of education. I do not believe I have found him yet.

Mr. FORD. Thank you. Mr. Ratchford, do you have any comments before we proceed?

Mr. RATCHFORD. Mr. Chairman, I simply wish to applaud you. I for one welcome the testimony this morning. I came here prepared to vote, to uphold the act of Congress without even the necessity of testimony.

I thought the issue of impoundment had been resolved with previous Presidents. I thought Congress had asserted its due mandate under the Constitution. I find this type of action quite frankly appalling.

The country has spoken. Congress has spoken. The courts have spoken. We now find ourselves back again with the suggestion that OMB can determine what Congress did or did not do, even while the law is clear. The intent is clear. The action is clear.

If you wanted to suspend at this point and vote, I would be prepared to do so.

Mr. FORD. Thank you very much. I think in the spirit of the Old West, we should give them a trial before we hang them.

Our panel this morning consists of Dallas Martin, executive director of the National Association of Student Financial Aid Administrators; Joel Packer, legislative director for the U.S. Student Association; Clelia Steele for the National Coalition for Women and Girls in Education; and Jerold Roschwalb, National Association of State Universities and Land Grant Colleges.

Without objection, the statements prepared for submission by each of the members of the panel will be inserted in the record at this point. If you would proceed from my right and your left, you may supplement the statements, summarize them, or comment on them in any way you feel would be helpful for the purposes of this hearing.

[The prepared statements referred to follow:]

STATEMENT

OF THE

NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

BEFORE THE

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

U.S. HOUSE OF REPRESENTATIVES

April 4, 1979

Presented by:

Dr. Dallas Martin

Executive Director

Mr. Chairman and Members of the Subcommittee:

It is a pleasure to appear before you today. However, I must admit that the members of our Association are very disappointed that the Administration has chosen to ignore certain legislative provisions of the Middle-Income Student Assistance Act, which in turn has necessitated this hearing. Nevertheless, we commend you, Mr. Chairman, and the members of this Subcommittee for taking affirmative steps to correct this situation and we pledge our complete support to ensure that the "independent" student provisions of MISAA are enacted, as promised, during the 1979-80 academic year.

The current inequity within the Basic Grant program as it relates to the treatment of independent students is not a new issue to the postsecondary education community, the members of Congress, or the Administration. The record shows that in hearings before this subcommittee on September 12, 1977, and before the Senate Subcommittee on Education, Arts, and Humanities on September 21, 1977, I testified on behalf of the major higher education associations regarding the inequitable treatment of independent students in the Office of Education's Notice of Proposed Rulemaking governing the 1978-79 Basic Grant family contribution schedules.

Earlier that same year, Commissioner Ernest Boyer testified before the same authorizing subcommittees and expressed similar concern about the existing student aid programs in light of the changing demographic characteristics of college students then as compared to those of ten years ago. He stated his belief that "the family contribution schedules should demonstrate common sense and flexibility and, in so doing, reflect the needs of our growing independent population."

Further, at those hearings on the 1978-79 family contribution schedules Leo Kornfeld, Deputy Commissioner of the Bureau of Student Financial Assistance, indicated the Office of Education would review carefully the definition and treatment of independent students in order to make necessary modifications in the 1978-79 schedules.

Following those hearings, on February 8, 1978, President Carter announced a $1.46 billion student aid package designed to help middle-income families and others meet rising college costs. The same day, Mr. Chairman, you and 24 co-sponsors from both sides of the aisle introduced the Administration's bill, H.R. 10854. On the following day, February 9, a joint hearing was held in which Secretary of HEW Joseph Califano, Commissioner Ernest Boyer, and Assistant Secretary of Planning and Evaluation Michael O'Keefe outlined the features of the President's proposal.

It is interesting to note, Mr. Chairman, that on Page 3 of the President's bill, starting on line 13, the following is found:

(d) Section 411(a)(3)(C) of the Act is amended by adding at the end thereof the following:

In addition, such regulations shall--

(i) provide that the portion of assets which shall be exempt from assessment for contribution for an independent student who has one or more dependents shall be the same as the portion so exempt for the family of a dependent student;

(ii) provide that the rate of assessment for contribution on that portion of assets of such an independent student which is not under subdivision (i) shall be the same as the rate

applied to the comparable portion of assets of the family of a dependent student; and

(iii) in establishing a portion of effective family income which shall be exempt from assessment for contribution by reason of subsistence requirements of independent students who have no dependents, use the same method for computation of such portion for such students as is used for dependent students and for independent students who have dependents.

This exact language also was included subsequently in the final bill, which was adopted by the Congress on October 14, 1978, and signed into law by the President on November 1, 1978.

At no time during the debate on this measure did any representative from the Administration oppose or even question the aforementioned provisions which affect the treatment of independent students. To the contrary, on September 28, 1978, in testimony before the Subcommittee on Education, Arts, and Humanities of the Senate Human Resources Committee, Deputy Commissioner Leo Kornfeld, Director of the Division of Policy and Program Development Peter Voigt, and Deputy Assistant Secretary for Legislation William Blakely, stated that the family contribution schedules for 1979-80 would change the method of determining the family size offset for the single independent student and would change the asset treatment for independent students with dependents. This portion of their testimony clearly documented the logic and reason for these changes and was applauded by all of us who felt the change was long overdue.

Following the approval of the 1979-80 family contribution schedules, the passage of the FY-79 Labor-HEW Appropriations Bill, and the

President's signing of the Middle-Income Student Assistance Act on November 1, institutions of postsecondary education, representatives from HEW and even members of Congress, began to tell the American public that more student aid would be available in FY-79 as a result of these actions.

In fact, it was not until well after the President's FY-80 budget proposal was announced that any hint was given by the Administration that the "independent student" provisions of MISAA would be deferred until the 1980-81 academic year.

Upon hearing this decision, those of us in the higher education community initially thought there simply was some confusion over the provision contained in the FY-79 HEW-Labor Appropriations Bill and the final provisions in MISAA. Several of us conferred with staff from the authorizing and appropriations committees and learned that the original intent of the language contained in Public Law 95-480 (the FY-79 Labor-HEW Appropriations Bill) was included simply to protect those students who already were eligible for financial assistance prior to the passage of MISAA (Public Law 95-566) in the event the FY-79 Basic Grant appropriation was not sufficient to fund all students. However, upon further investigation, the members of the House and Senate Labor-HEW Appropriations Subcommittee discovered that as much as $700 million in BEOG carry-over funds may be available this year and that there is more than ample funding to fully implement all the provisions contained in the Middle-Income Student Assistance Act.

A description of the appropriations and authorizing committees' interpretation of the provisions and a statement of their desire for corrective action subsequently was sent to the Secretary of HEW on February 2, 1979, by several members of both committees. Unfortunately,

it now appears that there was no confusion on the Administration's part regarding the provisions of the two public laws. Rather a deliberate decision was made by the Office of Management and Budget to simply ignore the law in what they call "a need for fiscal constraint."

Proof of this action on their part can be found in the Basic Grant family contribution schedules published in the March 23, 1979, Federal Register. In the General Background section, on Page 17898, the following statement appears:

> This law specified a 10½% rate for assessing parental discretionary income and made two changes in the treatment of independent students. One of these changes required that the family size offset for the single independent student would be computed in the same way that all other family size offsets are computed. The other provided that the assets of independent students with dependents would be assessed in the same manner as those of the parents of dependent students.
>
> However, it was decided to postpone implementation of these two changes in the treatment of independent students until the 1980-81 award period, because of the need for fiscal constraint with respect to FY 1980 outlays. Accordingly, these two changes are not included in the 1979-80 Family Contribution Schedules.

From this statement we can only conclude that certain parties within the Administration have decided to make their own decisions, regardless of Congressional intent, the provisions contained within the law, or the promises made by the President. While such action clearly could be judged illegal, in NASFAA's opinion it is a moral issue. A

commitment, made to more than 60,000 independent students by their government, signed into law by their President, and advertised in good faith by personnel from postsecondary educational institutions, has been broken.

Therefore, Mr. Chairman, NASFAA urges you, the members of this Subcommittee, and your colleagues in Congress to use your authority to disapprove the regulations submitted to Congress on March 16, 1979, which proposed to amend Title 45 of the Code of Federal Regulations, Section 190, subparts C and D, with respect to the family contribution schedules for use during the 1979-80 award period under the Basic Educational Opportunity Grant Program of the Higher Education Act of 1965, Title IV, part A(1).

In making this recommendation to you, NASFAA members fully realize that accurate Basic Grant award announcements to deserving students will be unnecessarily delayed due to the failure of the Administration to submit final family contribution schedules reflecting the provisions of the law. However, we have reviewed our recommendation carefully in light of this impact and have conferred with the affected parties. We all agree that the Administration's decision to deny authorized assistance to a significant portion of our most needy students cannot be tolerated. In the meantime, our members have been instructed to proceed with their internal student aid packaging operations and to use the results being produced on the Student Eligibility Reports. However, since the Bureau of Student Financial Assistance currently produces an alternate student eligibility index on each SER which accurately reflects the MISAA calculation for independent students, we will notify these students of the differences in their awards and explain to them that based upon an OMB decision, their 1979-80 Basic Grant award has been reduced or denied. I

am certain, Mr. Chairman, that you, the other members of Congress, and the Administration will hear more from these taxpaying citizens in the next few months unless all of the Middle-Income Student Assistance Act provisions are adhered to by HEW.

Thank you, Mr. Chairman, and Members of the Subcommittee, for providing the opportunity to have this issue fully addressed.

federal register

FRIDAY, MARCH 23, 1979

PART IV

DEPARTMENT OF HEALTH EDUCATION, AND WELFARE

Office of Education

BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Family Contribution Schedules

45-933 O - 79 - 2

[4110-02-M]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Family Contribution Schedules

AGENCY: Office of Education, HEW.

ACTION: Final Regulations.

SUMMARY: The Family Contribution Schedules are the formulas used in determining student eligibility on the basis of financial need for the Basic Educational Opportunity Grant Program. These final regulations establish the Family Contribution Schedules for the Basic Educational Opportunity Grant Program for the 1979-80 award period. They include a number of revisions to the 1978-79 Family Contribution Schedules. These revisions are intended to increase program equity and to respond to public and Congressional interest in easing the burden of educational costs for middle income families while still maintaining the statutory mandate of a formula-based program. Several of these changes, in addition to being included in the August 14, 1978 notice of proposed rulemaking for the 1979-80 Family Contribution Schedules, were later enacted into law as provisions of the Middle Income Student Assistance Act.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the FEDERAL REGISTER. The effective date is changed by statute if the Congress disapproves the regulations or takes certain adjournments. It should be noted, however, that these regulations apply only to Basic Educational Opportunity Grants made for the period of July 1, 1979 through June 30, 1980. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT:

William Moran, Chief, Basic Grants Policy Section, Division of Policy and Program Development, ROB-3, Room 4318, 400 Maryland Avenue, S.W., Washington, D.C. 20202. (202) 472-4300.

SUPPLEMENTARY INFORMATION:

General Background

The proposed Family Contribution Schedules for 1979-80 were published in the FEDERAL REGISTER as a notice of proposed rulemaking (NPRM) on August 14, 1978. Copies of the NPRM were mailed to participating postsecondary institutions and to various education organizations, and public comment was solicited. Additionally, Congressional hearings were held on the proposed regulations. Subsequent to the publication of the NPRM, Congress enacted the Middle Income Student Assistance Act Public Law 95-566.

This law specified a 10½% rate for assessing parental discretionary income and made two changes in the treatment of independent students. One of these changes required that the family size offset for the single independent student would be computed in the same way that all other family size offsets are computed. The other provided that the assets of independent students with dependents would be assessed in the same manner as those of the parents of dependent students.

However, it was decided to postpone implementation of these two changes in the treatment of independent students until the 1980-81 award period because of the need for fiscal constraint with respect to FY 1980 outlays. Accordingly, these two changes are not included in the 1979-80 Family Contribution Schedules.

The public comments that were received on the NPRM and the Office of Education responses to those comments are summarized in the appendix of these regulations.

Summary of Major Issues

1. *Adjustment of family size offsets.* The family size offsets included in the Family Contribution Schedules are intended to provide for basic family expenses that must be met before any contribution toward a student's educational costs can be expected. The family size offsets have been updated annually since the beginning of the Basic Grant Program to reflect the increase in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor. To derive the offsets for the 1978 base year which will be used in computing awards for the 1979-80 award period, the offsets for 1977 have been increased by 8.8 percent to reflect the rise in the Consumer Price Index.

2. *Change in the rate of assessing parental discretionary income for dependent students.* One of the objectives of the Middle Income Student Assistance Act was to make the Basic Grant Program available to more students from middle income families. To achieve that objective, that Act provided that parental discretionary income would be assessed at a rate of 10.5%. The August 14 NPRM had included optional rates for assessing discretionary income contingent upon Congressional action concerning tuition tax credit proposals that were pending at the time the NPRM was prepared. The first option was to change the assessment rate to 12% if tax credit legislation was not enacted. The second option, intended to be used if a tax credit bill became law, was to make no change in the assessment rate, leaving it at 20% for the first $5,000 of discretionary income and 30% for all discretionary income above the first $5,000. Now, however, in accordance with the provisions of the Middle Income Student Assistance Act, the final regulation includes a 10.5% assessment rate for discretionary income.

NOTE.—Section 411(a)(3)(A)(i) of the Higher Education Act of 1965 provides that Family Contribution Schedules will be effective for a twelve-month period beginning each July 1. However, the language of the Middle Income Student Assistance Act specifies August 1, 1979 as the effective date for the change in the rate of assessing discretionary income, mentioned in item 2 above. To provide consistency with all other aspects of the program, the Commissioner has made all changes in the 1979-80 Family Contribution Schedules effective as of July 1, 1979—the beginning of the 1979-80 award period. Additionally, the Commissioner has requested a technical amendment to change the effective date of these provisions in the Middle Income Student Assistance Act from August 1, 1979 to July 1, 1979.

3. *Increase in the personal asset reserve to $25,000.* The August 14 NPRM included a proposal to raise the asset reserve for non-farm and non-business assets from $17,000 to $25,000. The change to a $25,000 asset reserve has been included in the final regulation.

4. *Change in the definitions of a parent.* In an effort to achieve greater program equity and also to eliminate a continuing source of confusion in the application process, the August 14 NPRM included a proposed change in the definition of a "parent," limiting that term to the applicant's mother or father. That change has been adopted in the final regulation.

5. *Changes in the definition of an "independent student."* The August 14 NPRM also included two changes in the definition of an independent student, both of which liberalized the criteria for determining independent student status. These changes have been adopted in the final regulation. Both of these criteria apply for the year prior to the award period and for the two calendar years in which the award period occurs. These changes are:

(a) An increase from $600 to $750 in the amount of financial assistance an independent student may receive per year from his or her parents, and

(b) An increase from two consecutive weeks to six weeks in the amount of time an independent student may live in the home of his or her parents per year.

As was noted in the August 14 NPRM, these changes in the defini-

tion of an independent student apply not only to the Basic Grant Program, but also to the three campus-based programs (National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grants) for periods of study occurring after July 1, 1979. Changes in the definition for the regulations of each of these three programs are included at the back of these final regulations for the 1979–80 Family Contribution Schedules.

(Catalog of Federal Domestic Assistance No. 13.539 Basic Educational Opportunity Grant Program.)

Dated: March 14, 1979

ERNEST L. BOYER,
U.S. Commissioner of Education.

Dated: March 16, 1979.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

PART 190—BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. Subparts C and D of Part 190 of Title 45 of the Code of Federal Regulations are revised to read as follows:

Subpart C—Expected Family Contribution for Dependent Students

Sec.
190.31 Indicators of financial strength.
190.32 Special definitions.
190.33 Annual adjusted family income.
190.34 Computation of the expected family contribution for a dependent student from effective family income.
190.35 Computation of the expected contribution from parental assets.
190.36 Computation of the expected contribution from parental income and assets, adjusted for number of family members attending programs of postsecondary education.
190.37 Computation of the expected contribution from student's assets.
190.38 Computation of the total expected family contribution.
190.39 Extraordinary circumstances affecting the expected family contribution determination for dependent students.

Subpart D—Expected Family Contribution for Independent Students

190.41 Indicators of financial strength.
190.42 Special definitions.
190.43 Annual adjusted family income.
190.44 Computation of the expected family contribution for an independent student from effective family income.
190.45 Computation of the expected contribution from the assets of the independent student and spouse.
190.46 Computation of the total expected contribution from the student's and spouse's income and assets adjusted for number of family members attending programs of postsecondary education.
190.47 [Reserved]
190.48 Extraordinary circumstances affecting the expected family contribution determination for the independent student.

Subpart C—Expected Family Contribution for Dependent Students

§ 190.31 Indicators of financial strength.

"Expected family contribution" for a dependent student means the amount that the student and his or her family may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for dependent students:

(a) The effective income of the student's parent(s).

(b) The number of dependents of the student's parent(s).

(c) The number of dependents of the student's parent(s) who are attending, on at least a half time basis, a program of postsecondary education.

(d) The assets of the student.

(e) The assets of the student's parent(s).

(f) The unusual expenses of the student's parent(s). These unusual expenses are limited to medical and dental expenses and expenses arising from a catastrophe.

(g) The additional expenses incurred when two parents are employed or when a family is headed by a single parent who is employed.

(h) The unreimbursed expenses incurred for tuition by the student's parents for other dependent children enrolled in an elementary or secondary school.

(20 U.S.C. 1070a(a)(3)(B)(iii).

§ 190.32 Special definitions.

For purposes of this subpart:

The definition of "annual adjusted family income" is set forth in § 190.33.

"Assets" means cash on hand including amounts in checking and savings accounts, trusts, stocks, bonds, other securities, real estate, home (if owned), income producing property, business equipment, and business inventory.

However, for Native American students, the following shall not be considered as an asset of the student or his or her family in determining the expected family contribution:

(a) Any property received under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1701, et seq.).

(b) Any property that may not be sold or encumbered without the consent of the Secretary of Interior, or

(c) Any other property held in trust for the student or his family by the United States Government.

"Business assets" means property that is used in the operation of a trade or business, including real estate inventories, buildings, machinery and other equipment inventories, patents, franchise rights, and copyrights.

"Dependents of the student's parents" means the student and any of the following persons for whom the parents provide or will provide more than one-half support during 1979:

(a) Other children of the student's parents, or

(b) Persons living with the parents.

"Dependent student" means any student who does not qualify as an independent student as defined in § 190.42(a).

"Effective family income" of a student's parents means their annual adjusted family income minus the Federal income tax paid or payable with respect to the year for which adjusted gross income, as defined in § 190.33, is reported.

(20 U.S.C. 1070a(a)(3)(B)(iii).)

"Employment expense offset" means an allowance to meet expenses relating to employment when both parents are employed or when one parent qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

"Expenses arising from catastrophe" means unreimbursed casualty losses incurred by the parents of the student that may be deducted under section 165(c)(3) of the Internal Revenue Code. The expenses which may be reported are those which were incurred during 1978, unless the student files under the provisions of § 190.39. In that case the expenses reported will be those incurred in 1979.

(20 U.S.C. 1070a(a)(3)(B)(iii)(V).)

"Family size offset" means an allowance to meet the subsistence expenses of a family, including food, shelter, clothing, and other basic needs. The "Weighted Average Thresholds at the Low Income Level," as developed by the Social Security Administration, is used as a basis to determine the family size offset.

"Farm assets" means any property owned and used in the operation of a farm for profit, including real estate, livestock, livestock products, crops, farm machinery, and other equipment inventories. A farm is not considered to be operated for profit if crops or livestock are raised mainly for the use of the family, even if some income is derived from incidental sales.

"Federal income tax" means (a) the tax on income paid to the U.S. Government under chapter 2 of the Internal Revenue Code, or (b) the tax on income paid to the Governments of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands under the laws applicable to those jurisdictions.

(20 U.S.C. 1070a(a)(3)(B)(iii).)

"Medical expenses" means unreimbursed medical and dental expenses, except premiums for medical insurance, that may be deducted under section 213 of the Internal Revenue Code paid in 1978 by the parents of the student unless the student files under the provisions of § 190.39. In that case the expenses reported are those paid in 1978.

"Net assets" means the current market value at the time of application of the assets included in the definition of "assets" minus the outstanding liabilities (indebtedness) against those assets.

"Parent" means the student's mother or father. An adoptive parent is considered the student's mother or father.

(20 U.S.C. 1070a(a×3×B); unless otherwise noted.)

§ 190.33 Annual adjusted family income.

(a) "Annual adjusted family income" means, except as provided in paragraph (b), (c), and (d) of this section and § 190.39—

(1) The sum received in 1978 by the student's parents from—

(i) Adjusted gross income as defined by section 62 of the Internal Revenue Code, regardless of whether the parent filed an income tax return;

(ii) Investment income upon which no Federal income tax need be paid. An example of such income is the interest on State and municipal bonds; and

(iii) Other income upon which no Federal income tax need be paid. Examples of such income include child support payment, income from income maintenance programs such as welfare benefits, and Social Security benefits;

(2) Any Social Security benefits paid to or on account of the student in 1978; and

(3) One-half of any veteran's benefits to be paid to the student under chapters 34 and 35 of the United States Code for the award period for which aid is requested.

(b) For a Native American student, the annual adjusted family income will not include the income received by the student's parents under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(c) For a student whose parents are divorced or separated, the following procedures apply for reporting parent's income to determine the annual adjusted family income—

(1) Report only the income as described in paragraph (a) of this section of the parent who has or had custody of the student.

(2) If custody was not awarded, or if the parents have or had equal custody, report only the income of the parent with whom the student resided for the greater portion of the 12 month period preceding the date of the application.

(3) If none of the preceding criteria apply, report only the income of the parent who is providing or who has provided the greater portion of the student's support.

(d) The following rule applies if either a parent whose income is taken into account under paragraph (c), or a parent who is a widow or widower and whose income is taken into account under paragraph (a) has remarried. The income of such a parent's spouse shall be included in determining the student's annual adjusted family income if, in either 1978, 1979, or 1980, the student—

(1) Has received or will receive financial assistance of more than $750 in any one of those years from that spouse, or

(2) Has lived or will live for more than six weeks in any one of those years in the home of that spouse.

(20 U.S.C. 1070a(a×3×B).)

§ 190.34 Computation of the expected family contribution for a dependent student from effective family income.

The expected family contribution for a dependent student from effective family income is calculated as follows:

(a) Determine the effective family income of the student's parents.

(b) Determine discretionary income by deducting the following offsets from the amount calculated in paragraph (a):

(1) A family size offset in the amount specified in the following table.

Family size offsets

Family members	Amount
2	$4,450
3	5,400
4	6,850
5	8,000
6	9,150
7	10,100
8	11,200
9	12,250
10	13,250

[1] Plus $1,000 for each additional family member over 10.

In determining the family size, the following rules apply—

(i) If the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents.

(ii) If the parents are divorced or separated and not remarried, family members include any parent whose income is included in computing the annual adjusted family income and that parent's dependents.

(iii) If the parents are divorced and the parent whose income is included in computing the annual adjusted family income has remarried, or if that parent was a widow or widower who has remarried, family members also include any dependents of the new spouse if that spouse's income is included in determining the annual adjusted family income.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses and unreimbursed losses resulting from a castastrophe exceeds 20 percent of effective family income. The expenses that may be reported are those expenses paid by the student's parents during 1978, unless the student files under the provisions of § 190.39. In that case, the expenses reported will be those paid in 1979. The expenses of both parents are included only if the incomes of both are subject to inclusion in determining the effective family income. Similarly, a stepparent's expenses are included only if his or her income was subject to inclusion.

(3) An employment expense offset in the amount specified as follows—

(i) If both parents were employed in the year for which parent's adjusted gross income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of $1,500 or 50 percent of the adjusted gross income earned by the parent with the lesser income.

(ii) If a parent qualifies as a head of household as defined in section 3 of the Internal Revenue Code, use the lesser of $1,500 or 50 percent of his or her adjusted gross income.

The adjusted gross income figure to be used in all cases is that figure for 1978 unless the student files under the provisions of § 190.39. In that case the figure to be used is the one for 1979.

(4) An educational expense offset equal to the unreimbursed tuition paid by the student's parents for other dependent children enrolled in elementary or secondary school. The expenses which may be reported are those expenses paid in 1978 unless the student files under the provisions of § 190.39. In that case, the expenses reported will be those paid in 1979.

(c) If the discretionary income is a positive amount, multiply it by 10.5 percent. If it is negative, there is no expected family contribution from effective family income.

(20 U.S.C. 1070a(a×3×B).)

§ 190.35 Computation of the expected contribution from parental assets.

Except as provided for in paragraph (d), the expected contribution from parental assets is determined in the following manner:

(a) If the net assets do not include farm or business assets, deduct an asset reserve of $25,000 from the net assets.

(b) If the net assets include farm or business assets as defined in § 190.33, deduct an asset reserve from the net assets as follows—

(1) If farm or business assets are less than farm or business debts, deduct an asset reserve of $25,000 from the net value of all assets.

(2) If farm or business assets exceed farm or business debts, and the net value of non-farm and non-business assets is *$25,000 or more*, deduct an asset reserve of,

(i) $25,000 from non-farm and non-business assets, and,

(ii) $25,000 from farm and business assets.

(3) If farm or business assets exceed farm or business debts and the net value of non-farm and non-business assets is *less than $25,000*, deduct an asset reserve of $50,000 from the net value of all assets.

(4) If the result obtained in paragraphs (b)(1), (2)(ii), or (3) of this section is a negative amount, it shall be changed to zero.

(c) The expected contribution from parental assets equals five percent of the remainder obtained in paragraph (a) or (b) of this section.

(d) If the calculation of discretionary income required by § 190.34(b) produces a negative number, the expected contribution from parents' assets, calculated under paragraphs (a) or (b) of this section shall be reduced by the amount of that negative discretionary income.

(e)(1) If the student's parents are separated, or divorced and not remarried, only the assets of the parent whose income is included in computing annual adjusted family income shall be considered.

(2) However, if that parent has remarried, or if the parent was a widow or widower who has remarried, and the parent's spouse's income is also included under § 190.33, the assets of that parent's spouse shall also be included.

(20 U.S.C. 1070a(a)(3)(B).)

§ 190.36 Computation of the expected contribution from parental income and assets adjusted for number of family members attending programs of postsecondary education.

(a) For each grant the amount expected from parental income as determined in § 190.34 is added to the amount expected from parental assets as determined in § 190.35.

(b)(1) For each grant the combined expectation determined in paragraph (a) is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of post-secondary education during the award period for which Basic Grant assistance requested:

Number of family members attending programs of postsecondary education.	Expected contribution per student from combined contribution.
1	100 percent of the contribution determined in paragraph (a).
2	70 percent of the contribution determined in paragraph (a).
3	50 percent of the contribution determined in paragraph (a).
4 or more	40 percent of the contribution determined in paragraph (a).

(2) Family members are those persons referenced in § 190.34(b)(1).

(20 U.S.C. 1070a(a)(3)(B).)

§ 190.37 Computation of the expected contribution from student's assets.

For each grant the contribution from the student's assets equals 33 percent of his or her net assets.

(20 U.S.C. 1070a(a)(3)(B).)

§ 190.38 Computation of the total expected family contribution.

For each grant the total expected family contribution is the sum of—

(a) The expected contribution from the parents' income and assets as determined in § 190.36, and

(b) The expected contribution from the student's assets as determined in § 190.37.

(20 U.S.C. 1070a(a)(3)(B).)

§ 190.39 Extraordinary circumstances affecting the expected family contribution determination for dependent students.

(a) An applicant may submit an application to the Commissioner for determination of his or her expected family contribution using income data from 1979 instead of 1978 if—

(1) A parent whose income was or would have been included in the computation of the expected family contribution has died in 1978 or 1979,

(2) A parent whose income was or would have been included in the computation of the expected family contribution has lost his or her job for at least 10 weeks during 1979,

(3) A parent whose income was or would have been included in the computation of the expected family contribution has been unable to pursue normal income-producing activities for at least 10 weeks during 1979 because of (i) disability, or (ii) loss or damage to income-producing property as a result of a natural disaster,

(4) The parents of the applicant have become separated or divorced after the applicant submitted his or her application, or

(5) A parent whose income was or would have been included in the computation of the expected family contribution had his or her unemployment benefits expire in 1978 or 1979.

(b) An application submitted under paragraph (a) shall include the annual adjusted family income already received for 1979 and an estimate of the annual adjusted family income to be received for the remainder of that year.

(c) An applicant may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the applicant or the applicant's family has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(20 U.S.C. 1070a(a)(3)(B)(i)(V).)

Subpart D—Expected Family Contribution for Independent Students

§ 190.41 Indicators of financial strength.

"Expected Family Contribution" for an independent student means the amount that the student and his or her spouse may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for independent students:

(a) The annual adjusted family income of the independent student and spouse.

(b) The number of persons whom the independent student and spouse can claim as exemptions.

(c) The number of dependents of the independent student and spouse who are attending, on at least a half-time basis, a program of postsecondary education.

(d) The assets of the independent student and spouse.

(e) The unusual expenses of the independent student and spouse. These unusual expenses are limited to medical and dental expenses and expenses arising from a catastrophe.

(f) The additional expenses incurred when both the independent student and spouse are employed or when the employed independent student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

(g) The unreimbursed expenses incurred for tuition by the student or spouse for dependent children enrolled in an elementary or secondary school.

(20 U.S.C. 1070a(a)(3)(C).)

§ 190.42 Special definitions.

The definition of "Annual Adjusted Family Income" is set forth in § 190.43.

"Assets" means cash on hand including amounts in checking and savings accounts, trusts, stocks, bonds, other securities, real estate, home (if owned), income producing property, business equipment and business inventory.

However, for Native American students, the following shall not be considered as an asset of the student or his or her spouse in determining the expected family contribution—

(a) Any property received pursuant to an award under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(b) Any property that may not be sold or encumbered without the consent of the Secretary of Interior, or

(c) Any other property held in trust for the student or spouse by the United States Government.

"Dependent" means the independent student's spouse and any of the following persons for whom the student or spouse provides or will provide more than one-half support during 1979: (a) children of the student or spouse; or (b) persons living with the student and spouse.

"Effective family income" means the annual adjusted family income received minus the Federal income tax paid or payable with respect to the year for which adjusted gross income, as defined in § 190.43, is reported.

"Employment expense offset" means an allowance to meet expenses relating to employment when both the independent student and his or her spouse are employed or when the independent student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

"Expenses arising from catastrophe" means unreimbursed casualty losses incurred by the independent student and spouse that may be deducted under section 165(c)(3) of the Internal Revenue Code. The expenses which may be reported are those which were incurred during 1978, unless the student files under the provisions of § 190.48. In that case the expenses reported will be those incurred in 1979.

"Family size offset" means an allowance to meet the subsistence expenses of the independent student and his or her dependents, including food, shelter, clothing, and other basic needs. The "Weighted Average Thresholds at the Low Income Level," as developed by the Social Security Administration, is used as a basis to determine the family size offset, except in the case of a single independent student. In that case an amount estimated to be equal to living expenses during the normal period of non-enrollment is used.

"Federal income tax" means (a) the tax on income paid to the U.S. Government under Chapter 2 of the Internal Revenue Code, or (b) the tax on income paid to the Governments of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands under the laws applicable to those jurisdictions.

"Independent student" means:

(a) A student who for 1978, 1979, or 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s) for any one of these years;

(2) Has not received and will not receive financial assistance of more than $750 from his or her parent(s) in any one of these years; and

(3) Has not lived and will not live for more than six weeks in the home of his or her parent(s) in any one of these years; or

(b) A student whose last surviving parent for whom financial information would have been reported on the application under the provisions of Subpart C has died in 1978, 1979, or 1980.

(20 U.S.C. 1070a(a)(2)(B)(iii).)

"Medical expenses" means unreimbursed medical and dental expenses, except premiums for medical insurance, that may be deducted under section 213 of the Internal Revenue Code for 1978, by the independent student and spouse unless the student files under the provisions of § 190.48. In that case the expenses reported are those for 1979.

"Net assets" means, at the time of application, the current market value of the assets included in the definition of assets minus the outstanding liabilities (indebtedness) against those assets.

"Parent" means the student's mother or father. An adoptive parent is considered the student's mother or father.

(20 U.S.C. 1070a(a)(2)(C).)

§ 190.43 Annual adjusted family income.

(a) "Annual adjusted family income" means, except as provided in paragraphs (b) and (c) of this section and § 190.48—

(1) The sum received in 1978 by the student and spouse from—

(i) Adjusted gross income as defined by section 62 of the Internal Revenue Code, regardless of whether the student or spouse filed an income tax return;

(ii) Investment income upon which no Federal income tax need be paid. An example of such income is the interest on State and municipal bonds; and

(iii) Other income upon which no Federal income tax need be paid. Examples of such income include child support payments, income from income maintenance programs such as welfare benefits and Social Security benefits.

(2) One-half of any veteran's benefits to be paid to a student under Chapters 34 and 35 of the United States Code for the award period for which aid is requested.

(b) For a Native American student, the annual adjusted family income will not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(c) In the case of the student who is divorced or separated, only the student's own income shall be considered in determining the annual adjusted family income.

(20 U.S.C. 1070a(a)(2)(B).)

§ 190.44 Computation of the expected family contribution for an independent student from effective family income.

The expected family contribution for the independent student from effective family income is calculated as follows:

(a) Determine effective family income of the student and spouse.

(b) Determine discretionary income by deducting the following offsets from the amount calculated in paragraph (a):

(1) A family size offset in the amount specified in the following table.

Family size offsets

Family members	Amount
1	$3,200
2	4,450
3	5,600
4	6,650
5	6,650
6	6,650
7	10,100
8	11,300
9	12,250
10*	13,250

*Plus $1,000 for each additional family member over 10.

In determining the family size, the following rules apply—

(i) Family members normally include the student and spouse and their dependents.

(ii) However, if the student is divorced or separated, the spouse (ex-spouse) and his or her dependents are not counted in the family size.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental ex-

penses and unreimbursed losses resulting from a catastrophe exceeds 20 percent of effective family income. The expenses that may be reported are those expenses paid by the student and spouse in 1978, unless the student files under the provisions of § 190.48. In that case the expenses reported will be those paid in 1979. The expenses of both the students and spouse are included only if the incomes of both are subject to inclusion in determining the effective family income.

(3) An employment expense offset in the amount specified as follows—

(i) If both the student and spouse were employed in the year for which adjusted gross income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of $1,500 or 50 percent of the adjusted gross income earned by the person with the lesser income.

(ii) If a student qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of $1,500 or 50 percent of his or her income.

The adjusted gross income figure to be used in all cases is that figure for 1978, unless the student files under the provisions of § 190.48. In that case the figure to be used in the one for 1979.

(4) An educational expense offset equal to the unreimbursed tuition paid by the student and spouse for other dependent children enrolled in elementary or secondary school. The expenses that may be reported are those expenses paid in 1978, unless the student files under the provisions of § 190.48. In that case the expenses reported will be those paid in 1979.

(20 U.S.C. 1070a(a)(3)(B).)

(c) If the discretionary income is a positive amount, multiply it by:

(1) 75 percent for the single independent student with no dependents;

(2) 50 percent for the married independent student with no dependents other than a spouse; or

(3) 40 percent for the independent student who has dependents other than a spouse.

If the discretionary income is negative, there is no expected family contribution from effective family income.

(20 U.S.C. 1070a(a)(3)(C).)

§ 190.45 Computation of the expected contribution from the assets of the independent student and spouse.

(a) Except as provided for in paragraph (b), the expected contribution from the assets of the independent student and spouse is determined in the following manner:

(1) Determine the net assets owned by the student and spouse.

(2) The expected contribution from assets equals 33 percent of the amount determined in paragraph (a)(1) of this section.

(b) If the calculation of discretionary income required by § 190.44(b) produces a negative number, the expected contribution from the student's assets calculated under paragraph (a) shall be reduced by the amount of that negative discretionary income.

(20 U.S.C. 1070a(a)(3)(B).)

§ 190.46 Computation of the total expected contribution from the student's and spouse's income and assets, adjusted for number of family members attending programs of postsecondary education.

(a) For each grant, the amount expected from family income as determined in § 190.44 is added to the amount expected from assets as determined in § 190.45.

(b) For each grant, the combined expectation determined in paragraph (a) is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which Basic Grant assistance is requested.

Number of family members attending institutions of postsecondary education:	Expected contribution per student from combined contribution:
1	100 percent of the contribution determined in paragraph (a).
2	70 percent of the contribution determined in paragraph (a).
3	50 percent of the contribution determined in paragraph (a).
4 or more	40 percent of the contribution determined in paragraph (a).

Family members are those persons referenced in § 190.44(b)(1).

(20 U.S.C. 1070a.)

§ 190.47 [Reserved]

§ 190.48 Extraordinary circumstances affecting the expected family contribution determination for the independent student.

(a) An applicant may submit an application to the Commissioner for determination of his or her expected family contribution using income data from 1979 instead of 1978 if—

(1) A spouse whose income was or would have been included in the computation of the expected family contribution has died in 1978 or 1979,

(2) A spouse whose income was or would have been included in the computation of the expected family contribution has lost his or her job for at least 10 weeks during 1979,

(3) An applicant or spouse whose income was or would have been included in the computation of the expected family contribution has been unable to pursue normal income-producing activities for at least 10 weeks during 1979 because of (i) Disability or (ii) loss or damage to income-producing property as a result of natural disaster,

(4) The applicant has become separated or divorced after he or she submitted his or her application,

(5) The applicant was employed full-time in 1978 (at least 35 hours per week for a minimum of 30 weeks during 1978) and is no longer employed full-time,

(6) An applicant or spouse whose income was or would have been included in the computation of the expected family contribution has had his or her unemployment benefits expire in 1978 or 1979, or

(7) An applicant's last surviving parent for whom financial information was reported on an earlier application for the award period has died.

(b) An application submitted under paragraph (a) of this section shall include the annual adjusted family income already received for 1979 and an estimate of the annual adjusted family income to be received for the remainder of that year.

(c) An applicant may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the applicant or the applicant's spouse has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(20 U.S.C. 1070a(a)(3)(B)(ii)(V).)

PART 144—NATIONAL DIRECT STUDENT LOAN PROGRAM

2. Section 144.2 of part 144 of Title 45 of the Code of Federal Regulations is amended by adding the definition of "independent student (effective July 1, 1979)," to read as follows:

§ 144.2 Definitions.

* * * * *

"Independent student (effective July 1, 1979)"

(a) This term means a student—

(1) Who is a veteran; or

(2) Who for the calendar year(s) of the award period for which aid is requested or the calendar year before the first calendar year of that award period—

(i) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s) for any one of these years;

(ii) Has not received and will not receive financial assistance of more than $750 from his or her parent(s) in any one of these years; and

(iii) Has not lived and will not live for more than six weeks in the home of his or her parent(s) in any one of these years.

(b) However, the Commissioner considers that a student will not have been claimed as an exemption by a parent, will not have received more than $750 from a parent and will not have lived in the parent's home for more than six weeks if that parent dies before the student submitted his or her loan application.

(20 U.S.C. 1087aa-ff, 20 U.S.C. 1087dd(c).)

PART 175—COLLEGE WORK-STUDY PROGRAM

3. Section 175.2 of Part 175 of Title 45 of the Code of Federal Regulations is amended by adding the definition of "independent student (effective July 1, 1979)," to read as follows:

§ 175.2 Definitions.

* * * * *

"Independent student (effective July 1, 1979)."

(a) This term means a student who for the calendar year(s) of the award period for which aid is requested or the calendar year before the first calendar year of that award period—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes, by his or her parent(s) for any one of these years;

(2) Has not received and will not receive financial assistance of more than $750 from his or her parent(s) in any one of these years; and

(3) Has not lived and will not live for more than six weeks in the home of his or her parent(s) in any one of these years.

(b) However, the Commissioner considers that a student will not have been claimed as an exemption by a parent, will not have received more than $750 from a parent, and will not have lived in the parent's home for more than six weeks if that parent dies before the student submitted his or her College Work-Study application.

(42 U.S.C. 2751-2756.)

PART 176—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

4. Section 176.2 of part 176 of Title 45 of the Code of Federal Regulations is amended by adding the definition of "independent student (effectively July 1, 1979)," to read as follows:

§ 176.2 Definitions.

* * * * *

"Independent student (effective July 1, 1979)."

(a) This term means a student who for the calendar year(s) of the award period for which aid is requested or the calendar year before the first calendar year of that award period—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes, by his or her parent(s) for any one of these years;

(2) Has not received and will not receive financial assistance of more than $750 from his or her parent(s) in any one of these years; and

(3) Has not lived and will not live for more than six weeks in the home of his or her parent(s) in any one of these years.

(b) However, the Commissioner considers that a student will not have been claimed as an exemption by a parent, will not have received more than $750 from a parent, and will not have lived in the parent's home for more than six weeks if that parent dies before the student submitted his or her grant application.

(20 U.S.C. 1070b.)

APPENDIX—SUMMARY OF COMMENTS AND RESPONSES

Set forth below is a summary of the public comments received on the proposed Family Contribution Schedules and the Office of Education responses to those comments. Generally, the comments and responses appear in the numerical sequence of the regulations and are identified with the section number and title of the section to which they refer.

§ 190.32 Special Definitions. "Parent".

Comment. A number of people commented on the proposed change in the definition of the term, "parent." The majority of these commenters (approximately 70%) favored the new concept, stating that it was more realistic and equitable to consider only the natural or adoptive parents as parents for Basic Grant purposes. On the other hand, those who opposed such a definition generally felt that some parents are already abdicating their responsibilities as far as the postsecondary education of their children is concerned, and this will only make it easier for them to do so.

In addition to these 30% who were opposed to the change, several commenters favored the change with reservations. For example, two commenters thought that there should be a revised concept of "spouse" to complement the new definition of parent. This would, according to the commenters, identify those situations in which a student was living with and, thus, receiving support from, someone to whom the student was not legally married.

Along similar lines, one commenter suggested that the Basic Grant Program should consider, at a minimum, the value of the room and board that a student receives when he or she lives with a person other than his or her parent. Finally, one commenter was concerned that the new definition of parent would automatically make a student independent of a step-parent who might be providing considerable financial help.

Response. As was indicated in the preamble to the proposed rules, the Basic Grant Program has always operated under the assumption that parents have the first responsibility for the education of their dependent children. While the Commissioner definitely agrees with that concept, it has become apparent that people, other than the parents, from whom the applicant might receive some support do not necessarily have a similar responsibility. Thus, the suggestion to retain the old concept of "other parent" for such people and, thus, to view the affected students as dependent upon them for their postsecondary education has not been reflected in the final regulation.

The Commissioner has also decided not to adopt a new, more encompassing definition of spouse, believing that such a definition is not necessary. If a student qualifies as an independent student, the legal definition of spouse will continue to be used in determining whose income must be reported for purposes of establishing Basic Grant eligibility.

Regarding the reporting of the value of room and board that an independent student might receive by living with someone other than a parent or spouse, the Commissioner does not feel that it would be practical to attempt to determine if such benefits exist or to determine the value of those benefits. Thus, the recommendation has not been adopted.

Finally, the Commissioner does agree that, under certain conditions, a step-parent's, as well as a parent's, income and assets should be reported in determining the eligibility of a dependent student. These conditions are addressed in § 190.33(d) of the final regulations. It should be noted, however, that the step-parent's income and assets are only considered because, first, the student has already been determined to be dependent on his or her natural or adoptive parent and, second, there exists a familial finan-

cial relationship between the student and the step-parent. Thus, the new definition of parent does not automatically remove a step-parent from consideration for Basic Grant purposes. Rather, the same concept that existed in the past continues to exist.

Comment. In noting the language of the 1978-79 Family Contribution Schedules, one commenter asked whether the unusual expenses (casualty losses and medical expenses) of the entire family should be considered for a dependent student since the income that is reported is only the income of the parents.

Response. The Commissioner agrees that, for a dependent applicant, the "expenses arising from catastrophe" and "medical expenses" should be only those expenses incurred by the parents whose income is included. Expenses which are incurred by the applicant himself or herself or by other members of the family other than the parents should not be considered as offsets against the effective family income of the parents. Therefore, the language in § 190.2 defining those expenses has been clarified.

§ 190.33 Annual adjusted family income.

Comment. Several comments were received related to the annual adjusted family income. One commenter thought that special consideration should be given to farm families. Specifically, this person thought that since farm income fluctuates considerably from year to year, we should use income averaging for farm incomes over the past three years. As an alternative, he suggested allowing a larger amount of discretionary income for an eligible applicant's family to offset not only the effects of inflation on the farm family's income, but, also, the special financial problems that farmers often encounter.

The second comment related to the fact that the claiming of the applicant as an income tax exemption jointly by the parent and step-parent is not a criterion for requiring part or all of the step-parent's income and assets to be reported. This commenter felt that many students who do live in such a home do not report that fact. But, if the income tax exemption criterion were stated, it would be easy to document where the applicant lives or has lived.

The third comment was also related to when the step-parent's financial resources should be considered. This commenter, however, felt that the step-parent's income should sometimes be included even if neither of the stated conditions in § 190.33 exists since the step-parent's and the parent's funds are often used jointly.

Response. None of these suggestions were implemented in the final regulations. The family size offsets have, of course, been increased by amounts which reflect the increase in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor. This, the Commissioner feels, provides an adequate offset from the family's effective income for Basic Grant applicants. If special consideration were given to members of one occupation, but not to others, the concept of consistent treatment for all applicants applying for Basic Grant assistance would be jeopardized. Several occupations in addition to farming are characterized by yearly fluctuating incomes. The Basic Grant Program treats all of these situations in an identical fashion, i.e., by using the base year income as the best available indicator of the current year income. While the base year income may in some cases exceed the current year income, it is just as likely that the opposite will be true. And in the majority of cases, the difference is likely to be minimal. The use of an average of the past three years' incomes would substantially complicate both the application and the validation processes and would probably not be as accurate a reflection of an applicant's current financial situation as is the use of the base year.

Concerning the reporting of the step-parent's income and assets, the tax exemption criterion is not used since it does not always indicate that a familial or financial relationship exists or existed between the applicant and the step-parent. For example, when one parent is allowed to claim the applicant as a tax exemption as a result of a divorce settlement, and that parent files a joint return with his or her new spouse, it does not necessarily indicate that the new spouse (the step-parent) provided any financial assistance to the applicant. Neither does it indicate whether the applicant lived with the step-parent for any length of time.

In short, the claiming of a student by the step-parent does not establish that a relationship "equivalent" to that of parent and child exists for the step-parent and step-child as is called for in the Basic Grant legislation. Thus, the Basic Grant Program would not want to require that the step-parent's financial information be used to determine such an applicant's eligibility in the absence of one of the stated criteria, i.e., if no familial or financial link existed between the step-parent and the applicant. In such a case, of course, the applicant would still be dependent by virtue of the fact that he or she had been claimed by his or her parent on the parent's joint tax return. However, only that parent's financial information would be reported. The "fact" that both the step-parent's and the parent's funds are often used jointly is an imprecise determination at best. It is not considered by itself to be an adequate criterion by which a relationship equivalent to that between a parent and a child can be said to exist between a step-parent and a step-child.

Comment. Another commenter suggested that in cases of self employment, taxable income should be used instead of adjusted gross income when determining the effective family income of an applicant's parents.

Response. Since the Basic Grant Program is formula-based, it is imperative that all applicants receive equal and consistent treatment in the determination of their need. The various deductions to which a taxpayer is entitled by law will vary from one individual to another regardless of whether he or she is self-employed or not. By mandating that the adjusted gross income line be used, the Commissioner believes that a more consistent treatment of applicants is achieved. It is also the Commissioner's belief that such a figure will provide a more realistic figure of effective family income than would be achieved by allowing a family to report only that portion of its income that is subject to taxes after various deductions have been subtracted from that income.

§ 190.34 Computation of the expected family contribution for a dependent student from effective family income.

Comment. As part of § 190.33 of the proposed rules the Office of Education suggested that one of two alternative approaches to assessing parental income be incorporated into the final regulations. The two alternatives were proposed to accommodate whatever action Congress might take concerning tuition tax credits. Alternative A provided for a 15% assessment of discretionary income and would result in both a greater number of students qualifying for Basic Grants and in generally larger grants than would result from Alternative B. Alternative B provided for keeping the old assessment rate of 20% of the first $5,000 and 30% of everything else. The vast majority of commenters favored Alternative A.

Response. Subsequent to the publishing of the proposed regulations for the Family Contribution Schedules, the Congress passed the Middle Income Student Assistance Act. This legislation was signed by the President on November 1, 1978. One of its provisions is: "In determining the expected family contribution (for Basic Grants) for any academic year after academic year 1978-79, an assessment rate of 10.5 per centum shall be applied to pa-

rental discretionary income." Thus, the final regulations reflect this new provision of the law.

Comment. One commenter suggested that the same assessment rate that is applied to the discretionary income of parents of dependent students be used for independent students with dependents. He felt that to do otherwise represents a value judgment that it is more important to educate an 18 year-old student than a 30 year-old student.

Response. The assessment rate on the income of parents of dependent students will be 10.5% for the 1979-80 academic year. This is based on the applicable provision of the Middle Income Student Assistance Act. However, the assessment rate on the income of an independent student can be either 40%, 50%, or 75% depending on whether that independent student has dependents other than a spouse, has a spouse only, or is a single independent student.

No judgment about the relative importance of educating any segment of the population is intended to be made by this difference. Rather, the difference between the rates applied to the independent student's income and the rate applied to a dependent student's parent's income is a reflection of the philosophy that the independent student is the direct beneficiary of his or her education. Therefore, the independent student is expected to contribute a greater share of his or her income towards those educational expenses than is the parent of a dependent student, since the parent is not the direct beneficiary of the education.

Comment. While there was general support for the increases in the Family Size Offsets, several commenters suggested that larger increases were in order. One specific recommendation was that the "Uniform Method Standard Maintenance Allowances" be used for the offsets. The Basic Grant Program currently uses figures which result from yearly adjustments (to reflect inflation) to the "Weighted Average Thresholds at Low Income Level" developed by the Social Security Administration and published by the Bureau of the Census which were used initially.

Response. The suggestions to provide additional increases in the Family Size Offsets were not adopted. The figures in the final regulation reflect an 8.8% increase (rounded to the nearest $50) over last year's figures to account for the increase in the Consumer Price Index. The Commissioner believes that these figures adequately reflect the costs of basic family expenses that must be met prior to educational expenses.

Comment. One commenter questioned the fairness of allowing a stepfather of a dependent applicant to claim in his family size other dependents for whom he pays child support if that support is less than the increase in the Family Size Offset resulting from those additional family members for whom the support is paid. Further, this commenter wondered whether the children for whom child support is provided can be claimed as part of the family size by the family with whom those children reside.

Response. The step father is allowed to claim a dependent child who does not live with him but for whom he provides support payments only if he provides more than half of that child's support. Whether this amounts to more or less than the increase in the offset is irrelevant since the offset is a standard figure used for everyone regardless of whether the actual amount of the offset is expended or not. If parents spend less on their children than what is allowed by the offset, they are still entitled to the full amount of that offset.

The family with whom the children actually reside would report them in its family size but would also report as income any child support payments received for those children. Thus, in certain situations a child could be considered a dependent of two families.

Comment. One commenter suggested that, for disabled students, the Family Contribution Schedules should be adjusted to reflect the exceptional expenses of those students.

Response. Since the Basic Grant Program is formula based, it is imperative that all applicants receive fair and consistent treatment in the determination of their eligibility for assistance. The formula used by the Program takes into account the basic subsistence expenses that must be met by the family before any contribution from its income is expected. Thus, in attempting to provide all applicants an equal opportunity for assistance, the Commissioner believes that standard treatment is necessary. This standard and equitable treatment is applied to both the family income to determine eligibility for assistance and to the allowable costs of attendance for enrollment in a postsecondary institution which help to determine the amount of that assistance.

It should be noted that the Basic Grant is not intended to provide for all of a student's educational expenses, whether that student is disabled or not. Rather, it is intended to provide a foundation of financial aid. Other aid, in addition to the Basic Grant, can be awarded when additional need exists.

Comment. One commenter pointed out that the increases in the Family Size Offsets for additional family members are not equal, but rather fluctuate between $900 and $1,450. Further, the fluctuations appear to be somewhat random. He suggested that if there were to be different increases for additional family members, the first addition (the first child) should produce the largest increase in the amount offset and later children should produce lesser increases.

Response. The family size offsets that the Basic Grant Program used in its first year of operation were based on the "Weighted Average Thresholds at Low Income Level" developed by the Social Security Administration and published by the Bureau of the Census. The expenses in that table were based on the food costs of families of given sizes, as well as on certain assumptions about additional expenses for shelter and other family needs. The figures have been updated annually to reflect increases in the Consumer Price Index. The fluctuations in the increases that result from different family sizes, thus, result from differences measured initially by the Social Security Administration.

§ 190.35 Computation of the expected contribution from parental assets.

Comment. Several people commented on the increase in the asset reserve for non-farm and non-business assets from the current $17,000 to $25,000. The vast majority of the commenters favored the increase. Two commenters, however, suggested that the increase should be slightly higher, while one thought that it was much too high and should only be increased to reflect the effects of inflation.

In addition, two other commenters suggested that home equity should not be considered at all when assets are reported, since the home usually represents a non-liquid asset. Another commenter suggested that, in addition to an asset reserve, $20,000 to $30,000 of home equity should be exempt from assessment. However, for anyone who owns a home worth more than $75,000 or perhaps $100,000, that commenter thought that the Basic Grant Program should reduce the amount of home equity that would be exempt from assessment.

Response. The basic tenet behind the assessment of assets is simply that families with assets are in a stronger financial position than families with similar incomes but without assets. Thus, for a need based program, some form of asset assessment is required. And, although equity in a home generally is considered to be a non-liquid asset, it, nevertheless, is part of a family's financial strength. As such, that asset is treated in the same manner as other assets.

The Commissioner agrees that there should be some protection of a family's assets since those assets are normally intended for a variety of uses in addition to the postsecondary educa-

tion of the family members. The raise in the non-farm and non-business asset reserve to $25,000, thus, reflects not only that philosophy but, also, the Commissioner's belief that that figure results in an adequate and fair treatment of the assets that a family might have.

§ 190.42 Special definitions "Independent student."

Comment. In addition to the comments of simple approval or disapproval on this section (which were about evenly divided), several commenters suggested specific changes. One commenter, for example, suggested that the definition of the base year for purposes of establishing independent status be changed for those students who attend school only during the second calendar year of any academic year, i.e., only during 1980 for the 1979-80 award period. The base year for such a student, according to this commenter, should be 1979 instead of 1978.

A second commenter recommended that veterans have a six month grace period immediately after their discharge during which they could live with their parents without being classified as dependent students. The purpose of this exemption would be to allow veterans time to establish their own residence after leaving the military.

Response. Neither of these suggestions was adopted. Since the program operates on the basis of yearly award periods, any student who attends any portion of a particular award period must face the same requirements of independent status as all other students attending school during that award period. Similarly, in regard to the suggested six-month grace period for veterans, the Commissioner does not wish to deviate from the concept that all independent students are required to meet the same conditions in order to be considered independent.

Comment. One commenter suggested that additional criteria, such as the age, the marital status, and the employment history of the applicant, be considered in determining his or her independent status.

Response. The age and marital status of an applicant are arbitrary criteria and would not necessarily indicate that an applicant is or is not financially independent of his or her parents. And, while the applicant's employment history would provide some indication of independence, the Commissioner believes that the existing criteria of (1) being claimed as a tax exemption, (2) living with the parents, and (3) receiving financial support from them adequately establish independence or dependence.

Comment. One commenter suggested that instead of establishing $750 as the set figure for allowable parental support for an independent applicant, the figure to be used should always reflect the figure that the Internal Revenue Service sets for the personal exemption.

Response. This suggestion was not adopted. This figure may or may not be the same as the Internal Revenue Service personal exemption figure. The Commissioner believes that, for the purposes of determining independent status, the $750 figure is adequate at this time.

Comment. Regarding the determination of independent status, several commenters urged that the Basic Grant Program adopt the proposal from the July 12, 1977 notice of proposed rulemaking, which called for an extension of the Federal tax exemption criterion to two years prior to the year for which aid is requested. Others suggested that such a rule not be adopted, thinking that the Commissioner was again proposing it.

Response. As indicated in the preamble to the August 14, 1978 notice of proposed rulemaking for these Family Contribution Schedules, the idea of extending the income tax exemption criterion back an additional year was considered at one time but never implemented. Such a rule would make an otherwise independent student who was enrolling in school in January of 1980 dependent solely because he or she was claimed by his or her parents for 1977. The Commissioner does not believe at this time that such an extension is necessary to determine the student's independent status.

Comment. One commenter suggested that since the Basic Grant Program's definition of an independent student will be used as the standard for the campus-based programs, § 190.42 should include a definition of an independent, graduate student. Further, this commenter suggested that the standards for graduate students be more liberal than those for undergraduate students.

Response. This suggestion was not adopted. The definition in this final Basic Grant regulation is repeated, for the campus-based programs with appropriate modifications. The criteria for independent student status will be the same for both graduate and undergraduate students.

§ 190.43 Annual adjusted family income.

Comment. One commenter wondered whether a separation, as mentioned in § 190.42a(c) of the proposed regulations would have to be a legal one.

Response. The final regulation, as was the case with the previous regulation, does not specifically require a legal separation. Thus, if the independent student is separated (legally or otherwise) or divorced as of the date of application, only the student's own income will be considered in determining the annual adjusted family income.

Comment. One commenter suggested that the regulation specifically state whether a student who pays room and board to his or her parents while living in their home is classified as an independent student.

Response. This suggestion has not been adopted. Such a student would be dependent since the pertinent section of the regulation, § 190.42(a)(iii), states that, to be classified as independent, the student must not have lived or will not live for more than six weeks in the home of his or her parents during any of the pertinent years. No exception is noted for any extenuating circumstances, such as the payment of room and board.

If such a provision were enacted, it would provide an opportunity for significant abuse of the independent student definition, since substantial benefits of room and board could be available to an applicant at a nominal cost. Consequently, a student paying room and board while living in his or her parent's home is classified as a dependent student under the final regulation.

§ 190.44 Computation of the expected contribution for an independent student from effective family income.

Comment. Although one commenter suggested that the increased family size offset for a single, independent student should become effective only if the old, more rigorous definition of an independent student is kept, there was virtually unanimous acceptance of that proposed increase by all commenters.

Response. The proposed change in the method of computing the family size offset for the single independent student to provide consistency with the method of computing the offsets for all other students has not been adopted. The proposal was put forth in the notice of proposed rulemaking published on August 14, 1978. Additionally, the President, on November 1, 1978, signed the Middle Income Student Assistance Act (MISAA), which in addition to its other provisions, also called for the proposed increase in the family size offset for the single independent student. However, the Office of Education has decided to postpone implementation of this change until 1980-81 because of budgetary considerations.

Comment. One commenter suggested that the Basic Grant Program family size offsets take into consideration not only the number of family members

but, also, the grade level of those family members who are in school and the amount of income that is actually available for their education.

Response. Since the Basic Grant Program is formula based, the family size offset for a given family size must be same for all families with that family size. While the program does consider both family size and unreimbursed primary and secondary school tuition and fees of other family members in determining the amount of money that should be available for the postsecondary educational expenses of an applicant, the grade level of the other dependent children is not *per se* a factor. Also, the Program does not attempt to determine if any money is actually given to the applicant but rather how much money should be expected to be available based on the need analysis formula used.

Comment. Several other comments were received which addressed § 190.33 as well as this section. These comments concerned unusual expenses for disabled students, the Uniform Method Standard Maintenance Allowance, and the amounts of the offsets.

Response. These comments were addressed in this appendix in the responses to recommendations regarding § 190.33.

§ 190.45 Computations of the expected contribution from the assets of the independent student and spouse.

Comment. Several commenters suggested that either the same asset reserve that is offered to the family of a dependent applicant and that was, under the proposed regulations, offered to the independent applicant with a family size greater than one, or some modified version of that concept be offered to a single independent applicant with no dependents. Others suggested that special consideration be given to non-liquid assets, especially equity in a house. And, on commenter suggested that asset protection should be graduated with age is done under the Uniform Methodology.

Response. These suggestions were not adopted. The Commissioner's position is that, generally, the independent student is expected to contribute a greater portion of his or her resources towards postsecondary educational expenses than is the family of a dependent student. This is because the independent student is the direct beneficiary of his or her education.

In recognition of the fact that an independent student with a family size greater than one has some of the same responsibilities that the family of a dependent student has, the same assessment of assets was proposed for both types of applicants. However, because of budgetary considerations as was noted in the response to comments on § 190.44, the Office of Education has decided to postpone the implementation of this proposed change until 1980-81 period. Thus, the proposed creation of an asset reserve for indpendent students with dependents has not been incorporated into these final regulations. And, the assessment rate for those assets remains the same as it was last year (33⅓).

§ 190.48 Extraordinary circumstances affecting the expected family contribution determination for the independent student.

Comment. Two comments were received suggesting that two additional reasons should be added to § 190.48 (with, presumably, comparable additions to § 190.39) to allow a student to file a Supplemental Form when applying for a Basic Grant. The first of these suggestions was that a student should be able to file a Supplemental Form based on a divorce that occurs prior to the date of the original Basic Grant application for that award period. The second was that students whose Social Security benefits have expired or students who have lost part-time jobs that they held in the year which they are reporting income should also be able to file Supplemental Forms.

Response. Neither of these suggestions was adopted. In developing the regulations for the Basic Grant Program, the Commissioner determined that the tax year prior to the year of application is the best indicator of family financial strength. For 1979-80 therefore, an independent applicant will report his or her 1979 income information.

It was recognized, however, that circumstances may occur which would dramatically affect the financial strength of the family after the base year of 1978. In order to accommodate these circumstances certain conditions have been established under which an applicant may submit an application that uses the current tax year (1979) as the base year and estimates the family income for that year. The Supplemental Form is the vehicle used in determining eligibility to file a Basic Grant application using estimated 1979 income.

One of these conditions is the divorce of separation of the applicant. However, if the divorce or separation occurs prior to the filing of the original Basic Grant application, there is no need to estimate income. Rather, the base year income of only the applicant is reported. The spouse's financial information is not considered since he or she is no longer part of the applicant's family.

The Commissioner had decided not be include expired Social Security benefits or lost part time jobs as additional conditions permitting an applicant to use the Supplemental Form for 1979-80. However, the Commissioner will study the possibility of adding these conditions in future award periods.

[FR Doc 90-8766 Filed 3-22-79; 8:45 am]

United States Student Association

The Merger of the U.S. National Student Association and the National Student Lobby

STATEMENT OF

JOEL PACKER
LEGISLATIVE DIRECTOR
USSA

BEFORE THE HOUSE
POSTSECONDARY EDUCATION SUBCOMMITTEE

ON H. CON. RES. 84
A RESOLUTION TO DISAPPROVE
THE 1979-80 FAMILY CONTRIBUTION SCHEDULE
for the

BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

APRIL 4, 1979

ROOM 2175
RAYBURN HOUSE OFFICE BUILDING

ALSO PRESENTED ON BEHALF OF

THE COALITION OF INDEPENDENT COLLEGE
AND UNIVERSITY STUDENTS (COPUS)

Suite 300 1028 Connecticut Avenue N.W. Washington, D.C. 20036 (202) 667-6000

Mr. Chairman and members of the Subcommittee, I would like to thank you for the opportunity to be here today. Actually, I would much prefer that this hearing did not have to occur, but unfortunately the Administration insists on ignoring the law. I am here today on behalf of the United States Student Association (USSA), which is the oldest and largest national student organization, representing almost three million college students through our 350 member campus student governments.

Let me state at the offset that USSA supports the resolution of disapproval of HEW's Family Contribution Schedule. We are shocked and appalled that the Administration has callously decided to deny 60,000 low-income independent students the money they are entitled to by law. This decision is even more upsetting by the Administration's bungled attempts to rationalize the delay in implementating the provisions of the Middle Income Student Assistance Act (MISAA). Compound this with the fact that these improvements were included in the Administration's own bill, and the situation becomes even more mind-boggling!

The problems that independent students face in financing their education is not something which has just been discovered. Indeeed there has been testimony presented many times to Congress and many statements made by the Administration that recognized the need for improving the inequitable situation faced by these independent students. In hearings held before this Subcommittee on September 12, 1977, Representative Richardson Preyer said,

> " I am particularly concerned with the BEOG Program as it affects the independent student. My interest in this matter stems from the experiences of constituents who, though barely self-sufficient, have been denied the BEOG. I presume this has occurred on the premise that the majority of the income of independent students should be going towards their education. However, it seems to me that before one can consider education, he or she must account for

> the basics of survival, such as food, clothing, and shelter. Understandably, there is little money left over to support college costs, and as day-to-day costs continue to rise, self-suffiency becomes more and more improbable... I have seen where this approach inadvertently discriminates against many independents."[1]

The National Association of Student Financial Aid Administrators (NASFAA) at this same hearing stated, in discussing the treatment of assets for independent students with dependents, "... the current procedure certainly imposes an unrealistic expectation upon the single self-supporting student who has dependents."[2]

In the record of this same hearing, Commissioner of Education Boyer, in a letter to Representative Ford said,

> "The Office of Education recognizes, however, that there are some serious problems of equity in the case of independent students. The Office of Education would like to emphasize the fact that additional consideration is being given to the problem of independents including the married student, and that we hope to present a more equitable proposal to the Congress by next March."[3]

OE indeed did give additional consideration to these problems. USSA has obtained a copy of an internal memorandum from the Acting Director, Division of Policy and Program Development, Bureau of Student Financial Assistance (BSFA) to the Commissioner, dated Dec. 14, 1977.[4] This memo presents various issues that were in need of decision regarding the Family Contribution Schedule for the 1979-80 academic year. This is the schedule we are all still agonizing over. The first issue that is discussed is the treatment of assets of independent students with their own dependents. As you are well aware, the current Schedule gives these individuals no asset reserve, and sets an assessment rate of 33%. The memo states,

> "This method of assessing assets has been subject to criticism since the inception of the program specifically as it affects independent students with dependents of their own. Critics of the current procedure argue that since independent students with dependents

> have essentially the same family responsibilities as the parents of dependents students, the method for assessing their assets should be equated with that applied to the assets of the dependent student's parents rather than to that for the assets of the dependent student himself. Although both the dependent student and the independent student with dependents are equally the beneficiares of their education, it is unrealistic to consider their assets equally available for liquidation to meet educational costs. To do so ignores the fact that the independent student with dependents has many additional obligations."

This fascinating memo goes on to present two options, A and B. Option A would have made no improvement in asset treatment. The only pro presented for this argument is that it would "avoid increased program costs". Option B would revise the asset treatment so that it would be the same as that used for parents of dependent students ($25,000 reserve and an assessment rate of 5 percent for assets in excess of the reserved amount.) Three pros are listed for this option as follows,

> "1. Provides more equitable treatment for independent students with dependents by recognizing their additional family responsibilities.
> 2. Implementation of this proposal provides fair means of resolving the problem of asset treatment which has existed since the inception of the Basic Grant Program.
> 3. The proposal is likely to satisfy the criticism on this subject which has been received from the financial aid community, the applicant population, and members of Congress."

The recommendation suggests that Option B be adopted as as "part of the overall effort to provide more equitable treatment of independent students..." The second issue discussed in this memo is that of the Family Size Offsets for single independent students. As you know, currently, as part of the BEOG award calculation, a Family Size Offset is included which is an allowance against income for basic subsistence costs. For families the offset used is based on 1972 Weighted Average Thresholds at the Low-Income Level published by the Bureau of the Census, updated annually to reflect changes in the Consumer Price Index. However, for

single independent students, only 35 percent of the threshold for a single person is allowed. In 1972, this figure was $700, and has since been adjusted for CPI changes to $1100. The OE memo notes,

> "Since the inception of the program, there has been considerable criticism of the level of the family size offset for the single independent student. The primary argument presented is that the offset is unrealistically low and as a result eliminates a number of students from becoming eligible. In addition, the treatment of the single independent student is not consistent with the treatment of other applicants, either dependent or independent with dependents of their own, for whom the full-size low-income threshold allowance as determined by the reported family size is given. (sic)"

Once again, the memo goes on to present two options, A and B. Option A would have maintained the current procedures for computing the Family Size Offset. The only pro presented is that this "would avoid increased program costs". Option B, would revise the method so that it is consistent with that used for all other applicants (this would result in an offset of $3400, the figure included in MISAA). Two pros are listed for this option,

> "1. Implementation of this proposal provides a logical and fair means of eliminating an inequity which has existed since the inception of the program.
>
> 2. The proposal should satisfy the criticism on this issue from the financial aid community, the applicant population, and members of Congress."

One con was given for the first option, of no change,

> "The method of computing the Family Size Offset for single independent students has received more criticism than any other single item in the Family Contribution Schedules, and it is the least defensible in terms of equity. Considerable public and Congressional criticism will result if we make no attempt to remedy this inequity as part of our overall review of the treatment of the independent student, and will reflect adversely on the credibility of our study."

This internal memo shows in perfect clarity that OE did study this issue, that it did receive criticism since the inception

of the program, and that it believed that changes needed to be made to remove inequities. All this before anyone ever heard of MISAA. I could stop my statement here and still have presented a case of OE ignoring inequities and criticism. But much more than that is at stake.

The next time the independent student pops up is February 8, 1978. This is the day when the Administration held a press conference along with several members of Congress to announce the President's proposal of aid for middle-income families. A HEW press release which detailed the bill's features mentioned that one of the provision would "Eliminate inequities in the treatment of self-supporting students, particularly those who have dependents."[5] This exact same sentence was included in the testimony presented by Secretary Califano at a joint hearing of the Senate Committee on Human Resources and the House Education and Labor Committee on February 9, 1978.[6]

On February 23, 1979, Commissioner Boyer testified on the middle-income proposal,which at that time was HR 10854. His statement said,

> "One final point on the Basic Grants program. We are proposing to increase the income offsets for single independents from $1100 during 1978-79 to $3400 in 1979-80. This change will permit us to treat these students in the same manner as all other recipients... current procedure places the single independents at a severe disadvantage in financing their education. Our proposed change will improve considerably this situation."[7]

Let me jump over the remainder of the hearings, markups, and floor action on MISAA, except to note that at no point through the entire session did we or anyone else in the higher education community hear any concern from the Administration on including the improvements for independents as part of the legislation. We now turn to November 1, 1979. This is the day MISAA was signed by the President in a bill-signing ceremony at the White House attended by members of Congress and representatives of the entire higher education community. The President praised the bill as landmark education legislation. He did not

Give any hint that the Administration had any problems with any aspects of the legislation.

There was further proof of the Administration's commitment to the independent students when the proposed Family Contribution Schedule for 1979-80 was published in the Federal Register on August 14, 1978.[8] This Schedule included both the improvements in asset treatment for independents with dependents and the increase in the Family Size Offsets for single independents. In commenting on the asset change the proposed rule said,

> "This combination of asset treatment would preserve the concept that the independent student should contribute a greater portion of his or her resources toward postsecondary education expenses. At the same time, it recognizes that the independent student with dependents has family responsibilities which are identical to those of the parents of dependent students."

The only inkling that there may be problems took place in the conference report on the FY 79 Labor-HEW Appropriation bill. (H. Rept. No. 95-1746). The report contained a clause that said, "[The Family Contribution Schedule] shall retain the provisions relating to independent students as were in effect for the academic year 1978-79." An explanatory statement was added, "The managers emphasize that the conference agreement of BEOG's was an unusual action taken only because sufficient time was not available to address this matter in the regular legislative process." As someone present at the conference committee meetings, there is no question in my mind that the language was added because it seemed that MISAA was not going to pass and that the $2.6 billion that was appropriated would not be sufficient to both expand eligibility to middle-income students and make the improvements for independent students.

MISAA of course did pass, and its provisions would appear to supercede those of the approprations bill. Looking at the fiscal question, the $2.6 billion turns out to be sufficient, particularly since there is carryover of $560 million from FY 78. The Administration after the session ended did not give anyone reason to believe that they would interpret this any differently. USSA, as well as all other higher education organizations, and

members of Congress proceeded to inform our constituents of the provisions of MISAA, including the independent student improvements.

Shortly before the President's FY 80 budget was released we heard rumours that the independent student changes would not be funded. At a briefing on the budget conducted by HEW two days before the budget was officially released, it was discovered that indeed, the Administration was planning on ignoring what the statute mandated. When questioned on this, the response was, "legal problems". As the battle heated up, OE was asked for a copy of the legal opinion by the HEW general counsel which came up with these "legal problems". Interestingly, it was discovered that no such legal opinion existed, at least not in written form.

While the legal argument seemed like a good way for HEW to justify their decision, several members of Congress, including the Chair of this Subcommittee, and the Chair of the Senate Labor-HEW Appropriations Subcommittee, wrote to Secretary Califano to strongly state that the changes should be implemented "immediately", and that to do otherwise would be a violation of Congressional intent.

With the legal argument seemingly shot out from under them by the people who wrote the law and should have a good idea of what was intended, HEW has now lapsed into "fiscal restraint" as the rationale. While we are all cognizant of the fiscal problems facing our country, the Administration does not have the authority to simply not spend funds appropriated by the Congress. The Impoundment Act was specifically passed to avoid this problem. There is no question that the Administration is usurping the powers granted to Congress by the Constitution of the United States in this case.

If the Administration does not feel that these funds should be spent in FY 79, then they must submit a request for rescission or deferral to Congress to act on.

Mr. Chairman, it is astounding that the Administration persists in its illegal and immoral decision to deny students

the money they are entitled to and are expecting. The record has shown the need of these students for additional funding. The Administration's own documents point out the inequity currently in place. The President's own bill included these changes. The Administration testified several times in support of them. The proposed Family Contribution Schedule included them. The President praised the bill as compatible with his program. The Congress has appropriated sufficient funds. Key members of Congress have urged implementation. The entire higher education community has rallied in support of these provisions. Yet we are here today still looking for ways to force the Administration to do what they had promised and pledged they would do - which is to provide some simple justice to 60,000 deserving students.

USSA must urge this Subcommittee and the full Congress to adopt a resolution of disapproval. We realize the gravity of this request. Possible delays in giving students their awards may result. However, if this situation is resolved in the next two months, we do not envision any major program disruption. As the statement from NASFAA points out, OE is having two different eligibility indices printed on the Student Eligibility Report that a student receives. Thus assuming the changes are implemented, all these students will not have to have their applications reprocessed. The financial aid officer would simply use the higher figure in determining the actual award.

On behalf of the students that USSA represents, and the students that COPUS represents, but particularly on behalf of the working men and women who, when they graduated from high school, were unable to go to college, and who now seek, with low-incomes and family responsibilities, to improve their career and lives through a college education; the Vietnam veteran who is struggling to reintegrate himself back into society through improved educational opportunities; the widowed and divorced mothers attempting to cope with the awesome reponsibilities of both raising a family and going to school so they can gain the skills they need to enter the work force; the persons working full-time who face unemployment and are attempting to upgrade their skills; and the traditional age college student who either has no parents or who has parents financially incapable of supporting him or her, I pledge the full support of my organization to the efforts of this Subcommittee to implement in FY 79 the improvements for financially independent students. We all owe you a great debt for the successful struggle to pass MISAA last session. I hope that we can soon have another reason for rejoicing. Thank you again for the opportunity to be here today.

NOTES

1) Hearing before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, House of Representatives, Ninety-Fifth Congress, First Session on the Basic Educational Opportunity Grants Program 1978-79 Family Contributions Schedule, September 12, 1977, p.16.
2) Ibid. p. 77.
3) Ibid. p. 124.
4) All quotes mentioned from the OE memo are from an unpublished Dec. 14, 1977 memo to the Commissioner of Education from the Acting Director, Division of Policy and Program Development, BSFA, through the Deputy Commissioner, BSFA.
5) Statement of Joseph Califano, Jr.Secretary of the Department of Health, Education, and Welfare. HEW News, Feb. 8, 1978. Published in Hearings before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, House of Representatives, Ninety-Fifth Congress, Second Session on HR 10854. Hearings held Feb. 9, 16, 22, and 23, 1978, p.303.
6) Testimony of Secretary Joseph A. Califano,Jr. Department of Health, Education, and Welfare before a Joint Hearing of the Senate Committee on Human Resources and the House Committee on Education and Labor, Feb. 9, 1978. Published in Ibid.,p. 313.
7) Statement by Hon. Ernest L. Boyer, U.S. Commissioner of Education, Office of Education, Department of Health, Education, and Welfare, published in Ibid., p. 206.
8) Federal Register, Vol. 43, No. 157, Monday, August 14, 1978, p. 35967.

TESTIMONY

to the

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

COMMITTEE ON EDUCATION AND LABOR

UNITED STATES HOUSE OF REPRESENTATIVES

April 4, 1979

by

American Association of Community and Junior Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Jesuit Colleges and Universities
Council for the Advancement of Small Colleges
National Association for Equal Opportunity in Higher Education
National Association of Independent Colleges and Universities
National Association of Schools and Colleges of the United Methodist Church
National Association of State Universities and Land-Grant Colleges

Presented by

Jerold Roschwalb
Director
Office of Governmental Relations/Higher Education
National Association of State Universities and Land-Grant Colleges

From the Acceptance Speech by Governor Jimmy Carter, at the Democratic National Convention, New York City, Thursday, July 15, 1976:

"The test of any government is not how popular it is with the powerful, but how honestly and fairly it deals with the many who must depend on it."

"It is time for the law to be enforced. We cannot educate children, create harmony among our people, or preserve basic human freedom unless we have an orderly society."

"It is time for our government leaders to respect the law no less than the humblest citizen, so that we can end the double standard of justice in America."

Mr. Chairman and members of the Subcommittee, the witnesses appearing before you frequently and accurately note that it is a privilege, honor, and pleasure to have the opportunity of setting forth the views of the organizations they represent on the issue of the day. I am here, today, representing the associations listed on the cover sheet of this testimony and it is, indeed, a privilege and honor to appear before you. However, the nature of the issue detracts profoundly from the pleasure of this hearing. In our view, we are faced, quite incomprehensibly, by an Administration that has determined, solely for budgetary reasons, to refuse to implement an Act passed by the Congress last year, and signed into law by the President on November 1, 1978. Although the amount of funds involved is relatively small, $130 million in a $2.6 billion FY'79 appropriation for the BEOG program, and the issue at first blush may appear to be insignificant, we do believe that it points to something much greater: the danger of a government objectively selecting which of the laws of the land it will enforce or not enforce subject to fiscal or other standards it sets at any given time. We ask with great concern: if the Administration is to be permitted to violate this law and determine whether or not it will fund programs solely because of budgetary pressures in FY'79, what is there to prevent the Administration

from assuming it has the right to make similar determinations next year when budget pressures may be as great or greater and choose other programs that it will not fund, again solely in the interest of fiscal restraint?

The background facts in this matter now are considered stipulated. When Congress enacted the Basic Education Opportunity Grant program in 1972, it determined that independent students would be treated differently with regard to determining what portion of their assets and their discretionary income were to be appropriately taxed for their educational expenses before the students were to be eligible for grant funds. At that time, it was not clear precisely who was being thought of when the term "independent student" was used. There was concern that inordinate numbers of students would leave their parental homes to have themselves declared "independent," thereby, legally if unethically, taking advantage of the new grant program.

Subsequently, it has been shown that the overwhelming majority of independent students are not the traditional 18 to 20 year old college students. As Congressman Ford has set forth in his statement to the House of Representatives on March 28 (text appended), independent students frequently are displaced homemakers--widows or divorcees responsible for their own income and often for supporting their children. Others are Vietnam veterans. A substantial number are persons who, when they were 18 years old, and might have attended institutions of higher education, found that their financial situation prohibited them from going to college, since at that time there were few or no federal or other student financial assistance programs. Inadvertently, perhaps, the inequitable treatment of independent students proved to be sexist, discriminating against women as well as against older students.

When Congress reauthorized the Higher Education Act in 1976, it did not resolve this situation, but already it was an issue before the public for discussion, with increasing concern being raised in many quarters including

the Congress that the law be modified to create greater equity for the independent student. Three areas called for rectification: (a) the budget, how much independent students were permitted compared to dependent students, (b) the treatment of assets, including what percentage was to be taxable and what the rate of taxation should be and (c) the percentage of discretionary income the country expected independent students to contribute toward their education.

In early 1978, it was another matter of equity that turned the Congress' attention towards new legislation, that involving middle-income students. The appropriateness of legislation to alleviate the education burden on middle-income families was agreed to by the education committee leaders of the Congress, representatives of the Administration, and the higher education community, represented generally by Washington-based, association officials. From the outset, it was understood and agreed to by all parties that in this middle income student assistance legislation, enacted in the last weeks of the Congress and referred to as the MISAA bill, the problem of equity for the independent student also would be addressed. Proposals to create ideally equitable circumstances proved quite costly. The Administration established $1.2 billion as the limit for increased funding for FY'79 for the new legislation, and the various computer runs conducted in the Office of Education and elsewhere showed a need for sharp modifications to proposals for nearly identical treatment of dependent and independent students. The compromises agreed to are now in the law as embodied by MISAA (P.L. 95-566). It was understood that they would cost approximately $130 million for FY'79 when they were introduced into the law and when it was enacted.

We are now engaged in the beginning of a new legislative period with the Congress working on reauthorization of the Higher Education Act. While

the Congress has righted the situation of independent students with dependents in important ways, we hope that this Subcommittee will address what we believe to be a situation still lacking in fully equity for all independent students.

In sum, it was this legislation, MISAA, agreed upon by all parties, that was fought for by student organizations representing the independent student and all higher education associations. Congressional leaders in the education committees fought unremittingly and under enormous pressures of time, and they were aided, particularly in the last days of the 95th Congress, by an all-out effort of the White House using presidential influence to bring the MISAA legislation to the floor and ultimately to enactment. On November 1, 1978, President Carter signed the MISAA bill into law at the White House in the presence of scores of representatives of the Congress, the Administration, the education associations and individual institutions of higher education. The President, quite appropriately, hailed the Act as landmark legislation that would provide opportunities to whole new categories of students desperately needing financial assistance in order to gain access to higher education opportunities. There were no qualifications mentioned by the President nor by any other official of the Administration. No one suggested that the bill was superb except for the provisions dealing with the independent student.

Across the country, thousands of students acknowledged the capacity for the "system" to work in achieving equity for its citizens in correcting misconceptions or misimpressions even as they were aware that the entire problem had not yet been resolved. Financial student advisers at institutions appropriately began to inform their clientele of the changes in the law, in anticipation of their being able to offer greater assistance to additional

numbers of financially hard pressed students. At no point in the process did any one doubt that extending the eligibility to more participants in the BEOGs program or expanding the amount previously eligible students would be entitled to would fail to cost funds. That was what the entire legislation was about in the first place, especially in the context of other legislation being promoted in the Congress at that time to aid middle-income families also with tax funds in a manner that most higher education officials believed less advisable from the prospective of public policy. The Administration concurred in those views.

In this entire development of events there was only one minor "glitch." The Senate had added language to the appropriations bill for FY'79 requiring that payment in the BEOGs program to independent students follow the standards for the previous year. It was not because of the desire to save the $130 million involved nor the desire to perpetuate inequitable treatment of independent students that lay behind this. Rather, it was the still uncertain situtation of the legislation in the middle of 1978 that gave the Appropriations Committee some pause. It was after the passage of the appropriation bill, that MISAA came to the floors of the Congress for enactment where the changes in the treatment of the independent students were wholly supported. It was conscious and deliberate on the part of the Congress that the new law would establish new payment schedule requirements for independent students.

For its part, the Administration held to the agreed upon position. On August 14, the first documents proposing the new family contribution schedule for BEOGs was published and contained changes in the schedule consistent with the objectives of the Middle Income Student Assistance legislation before the Congress. In fact, as late as November, 1978, documents produced in the Department of HEW indicated every intention of funding the independent student

as called for in the law. Shortly thereafter, however, perhaps because of peculiar forms of reasoning prevailing at the Office of Management and Budget, a decision was made somewhere in the Administration to continue funding independent students according to the previous year's standards, in short, to postpone the implementation of MISAA with regard to independent students for one year.

There were reports out of HEW and in correspondence with the Commissioner of Education that indicated that the decision was based on some tortured legal legerdemain in which HEW's General Counsel's Office had succeeded in convincing itself, and itself only, that because of language that appeared in the appropriations bill, HEW was not required to follow the contribution schedule required by MISAA. This at least reflected the Administration's transient recognition that it needed some form of argument, however tenuous or specious, to maintain a position that violated the meaning of the law. Responding to this abuse of reason and long established legal standards of legislative interpretation, seven senior members of education authorization and appropriations committees in the House and Senate, including the Chairman of this Subcommittee and the Chairman and ranking minority member of the Senate Appropriations Subcommittee, wrote to Secretary Califano and stated clearly and without reservation that the intent of Congress was that independent students be funded according to the law as stated in the Middle Income Student Assistance Act.

Since then, the Administration has dropped its facade of legal casuistry and has agreed, quite incredibly, that the only reason HEW was not obeying the law was budgetary. When he appeared before this subcommittee on March 20, HEW's Secretary Califano with remarkable candor agreed to that. In brief, the Administration has succumbed to flagrant lawlessness with cool casualness

accepting the meaning of the law as everyone else now does, but choosing to ignore it.

> From the Acceptance Speech of Senator Walter F. Mondale, Democratic Candidate for Vice President of the United States, July 15, 1976:
>
> "Franklin Roosevelt said, 'the test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.'"
>
> "We pledge to restore government that tells the truth and obeys the law. Roosevelt once said that the Presidency is 'preeminently a place of moral leadership.'"

Mr. Chairman and members of the Subcommittee, it is entirely possible that in the welter of crises that confront the President, Vice President, and key officials of the Administration, they have yet to grasp a clear understanding of the level of anger that has been generated within the higher education community in the country by this behavior. It may be that this decision was determined by some low level bureaucrats in OMB who can only understand the positive aspects of reducing budgetary expenditures, but who fail to understand the irreducibility of a government's abiding by the law.

We are concerned about one unstated but implicit element in the Administrations embarrassing behavior. The position of the Administration in this affair appears to be enhanced only by its possible dependence on its capacity to blackmail--there is no other word--Congress in allowing it to violate the law. It is known to all concerned that the annual family contribution schedule must be published and approved and distributed to institutions across the country in time so that students may be informed on what their

grants may be, that funds may be distributed accordingly, and institutions may proceed to package assistance of grant, work, and loans to students. It may be that the Administration is depending on its being able to compel the Congress to allow it to violate the law so that literally millions of students are not injured by the Congress' insistence that the law be followed. If this is a basis for the Administration's obdurate refusal to respond positively to the law then it is more dangerous than its original lawlessness in refusing to do what the law says it must do.

If we in the higher education associations are profoundly disheartened by this chain of events, it is in part because we worked jointly with the Administration in support of the congressional effort to enact MISAA. We imagine that the Congress as well feels bewildered and perhaps betrayed by the Administration's position. The history of the development of the legislation and what the Administration supported from the start and what we all worked for jointly and finally achieved is clear; there is nothing ambiguous about it. The law says what the law says. It does not matter if there are those in higher education associations who believe that the law does not go far enough in achieving equity or if in the prospective of the denizens of OMB the law goes too far. It says what it says, and only the Congress of the United States is authorized by the Constitution of the United States to determine what the law should state. If the law is erroneous in its goals, then the Administration has the responsibility to turn to the Congress and request modification of the law. If the Congress should deem such modifications in order it will act accordingly; until such time the law remains the law.

Few of us fail to recall the atmosphere pervading this country only a few years ago, because an Administration in office believed it could choose

among the laws of the land in determining which it would follow and which it would violate. Previous Administrations have tried their hands at refusing to request funds for appropriations for other student aid programs in which minimal levels for funding are set in the law. To its credit the Congress has consistently rejected such requests and the illogic accompanying them and funded the programs beyond the minimal levels required by law, making it possible to achieve the goals intended by the Congress when those laws were enacted. We hope this Congress will respond in kind.

We admit to this committee, responsible for higher education legislation, that we are extremely worried over the rapid passage of time to that day when it will be imperative that the family contribution schedule is in the hands of institutional officials so that orderly distribution of federal funds may take place. We realize that if the Congress uses the authority it never has yet the need to use and formally rejects the proposed family contribution schedule proposed by the Department of HEW, it could enable HEW to precipitate a crisis in the program. But we emphasize that it is clear to all of us that the crisis will have been generated by HEW and not by the Congress. Despite these concerns there is a common view among associations of institutions, officials who head the institutions themselves, officials at institutions who advise and assist students in securing federal student aid to which they are entitled, and the students themselves. Some of these groups are represented here today to speak for themselves, and I believe to concur in our belief that the Congress must stand fast and insist on the law's implementation. The consequences of not doing so are more serious than any problem that could result in a brief delay in the publication of the family contribution schedule.

All of us are too familiar with battles that have raged in the past years in the hearing rooms of the Congress, and regrettably, in the courts,

costing funds that would be better devoted to educational activities than legal battles over federal agencies' penchant for rewriting the laws it feels the Congress has inadequately drafted through the creative use of the regulatory process. While that practice is a serious imposition on the democratic process it at least stays within the legal bounds of the system. This time the Administration is off on a complete frolic. It is not rewriting the law, rather it is acknowledging it, and flaunting its indifference to it. We believe that the Congress should not ignore this.

It is unwise to be alarmist and conjecture the worst case. But it would be foolhardy not to be concerned, given the past decade's history, whether an Administration that finds that by prudent timing it can evade those laws it would rather not implement will, in the following year, ignore other laws. For example, this Administration wishes the social security law changed as it affects educational benefits. Ultimately, the Congress may choose to do so. At the moment, congressional committees have indicated they are dubious over responding to the immedicate call for changes by the Administration. But in FY'80 or FY'81, once again for budgetary purposes, the Administration may choose to save funds by ignoring that law. Only if the Congress stands fast on this issue can it hope to save the Administration from itself.

We thank the committee for the opportunity to present the views of the higher education associations. I would be pleased to try to respond to questions of members of the Subcommittee.

From the Announcement Speech of Governor Jimmy Carter to the National Press Club, Presidential Campaign, December 12, 1974:

"Our people are understandably concerned about this lack of competence and integrity. The root of the problem is not so much that our people have lost confidence in government, but that government has demonstrated time and again its lack of confidence in the people."

"To begin with the confidence of people in our own government must be restored. But too many officials do not deserve that confidence."

"There is a simple and effective way for public officials to regain public trust -- be trustworthy!"

"All our citizens must know that they will be treated fairly."

"Every American has a right to expect that laws be administered in an evenhanded manner..."

INDEPENDENT STUDENTS

(Mr. FORD of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. FORD of Michigan. Mr. Speaker, under the basic educational opportunity grant program, independent students are those who do not or cannot rely on their families to support them in getting an education beyond high school. To be considered independent, a student must meet several rigorous criteria spelled out in the regulations governing the program. Generally, independent students are not the typical 18 to 22-year-old college students. They are displaced homemakers, widows, or divorcees who often return to school to attain marketable skills to support themselves and their families. They are housewives whose children have grown and who seek an education to broaden themselves intellectually or to enable them to seek employment. They are Vietnam veterans, who are trying to reenter the American society which treated them so inhospitably after our tragic experience in Southeast Asia. They are people employed full time trying to better themselves through education. Those independent students of the traditional college age are usually individuals pursuing an education despite the unwillingness or inability of their parents to pay a share. In short, independent students are generally highly motivated and committed individuals for whom education is a way to advance and improve their condition. They, of any target population of our student aid programs, should be effectively served by Federal student aid programs.

During the current academic year, 1978–79, independent students receive grossly inequitable treatment in the basic grant program. The families of dependent students now have the first $17,000 of their assets ($50,000 if they have farm or business assets) exempted from consideration in determining their ability to contribute to their children's postsecondary education. Independent students, including independent students with families, have no asset reserve; all of their assets are considered to be available to pay for their education. In addition, the unexempted assets of the family of a dependent student are taxed at a rate of 5 percent to establish the portion of their assets they are expected to contribute for the education of their children. All of the assets of an independent student are taxed at a rate of 33 percent in determining their expected contribution toward their own education.

This treatment of the assets of independent students is harsh and unfair. For example, a widowed mother returning to school would be expected to contribute toward her education one-third of the total value of the family home willed to her by her deceased husband.

The Middle Income Student Assistance Act corrected this inequity by requiring that independent students with families have the same asset protection and have their assets assessed at the same rate as the parents of dependent students for purposes of determining their expected contribution toward their education.

Also in the current academic year, single independent students are provided with a living allowance of only $1,100. The rest of their income is taxed at a rate of 70 percent if they are single, 50 percent if they are married but have no children and 40 percent if they are married and have children to determine their expected contribution toward their education.

The Middle Income Student Assistance Act retained these high assessment rates on the income of independent students. However, it required that the living allowance for independent students be calculated for the single independent student in the same way it is calculated for the families of dependent students and for independent students with families. The result will be that single independent students will have a living allowance of approximately $3,400 before the rest of their income is taxed at 70 percent in determining their expected contribution.

These modest changes to treat independent students more equitably under the basic grant program were approved by the President when he signed the Middle Income Student Assistance Act on November 1, 1978. In his remarks upon signing the bill the President noted: "this legislation is completely compatible with the recommendations made by me to the Congress earlier this year."

The basic grant family contribution schedule for 1979–80 was transmitted to the Congress on August 14, 1978 as a proposed regulation. This proposed family contribution schedule, which is subject to congressional review and disapproval under section 411 of the Higher Education Act, included all of the changes in the treatment of independent students which were subsequently enacted into law by the Middle Income Student Assistance Act. This proposed family contribution schedule was not disapproved by the Congress under section 411.

The fiscal 1979 Labor-HEW Appropriations Act provides funding for the basic grant program in the 1979–80 academic year since the program is forward funded. This act contains sufficient funds for the cost of the changes in the treatment of independent students made by the Middle Income Student Assistance Act.

This Appropriations Act also contains legislative language defering the funding for the more liberal treatment of independent students until the 1980–81 academic year. However, this language was superseded by the Middle Income Student Assistance Act which became

law after the fiscal year 1979 Labor-HEW Appropriations Act.

In addition, House and Senate Members from the authorizing and appropriations committees with jurisdiction over the basic grant program wrote to Secretary of Health, Education, and Welfare Joseph Califano on February 2, 1979, expressing their clear understanding that is is the intent of Congress that these changes be implemented for the 1979–80 school year. The original intent of the legislative language in the fiscal 1979 Labor-HEW Appropriations Act, even had it not been superseded by the Middle Income Student Assistance Act, was to assure adequate funds for students currently eligible for the program within the constraints of a responsible budget. Since the basic grant program was managed much more tightly in the current academic year, there is a substantial amount of fiscal year 1978 funds available to be spent in fiscal year 1979 and this concern is moot. Mr. Speaker, I am including the text of the February 2, 1979, letter for printing at the conclusion of my remarks.

Now any reasonable person would assume that the more equitable treatment of independent students would be available for the coming school year. But at the final moment someone at the Office of Management and Budget seems to think he or she has found an easy way to save some money. The final regulation on the family contribution schedule for 1979–80 was transmitted to the Speaker on March 16, 1979, after an inordinate delay of 7 months since the proposed regulation was sent to the Congress on August 14, 1978. The "summary" of this regulation offhandedly notes that, while the Middle Income Student Assistance Act "made two changes in the treatment of independent students * * *, it was decided to postpone implementation of these two changes in the treatment of independent students until the 1980–81 award period, because of the need for fiscal constraint with respect to fiscal year 1980 outlays. Accordingly, these two changes are not included in the 1979–80 family contribution schedules." In other words, it was decided not to follow the law of the land.

Thus, despite the mandate of the Middle Income Student Assistance Act, as approved and hailed by the President; despite the availability of sufficient already appropriated funds; despite the clear expression of congressional intent in the letter of February 2, and despite the proposed regulation of August 14 which received no adverse comments on the issue of the treatment of independent students and which the Congress chose not to disapprove, the final regulation proposes to break all of the promises that have been made to independent students for the coming year. Approximately 80,000 students will be asked to continue to bear an unfair burden in financing their education or they will be denied assistance completely.

The final regulation, which was transmitted to the Speaker on March 16, is subject to review by this Congress under section 431 of the General Education Provisions Act. Section 431 provides that Congress can disapprove this regulation within 45 days by concurrent resolution if it determines that the regulation "is inconsistent with the act from which it derives its authority." This regulation derives its authority from section 411 of the Higher Education Act as amended by the Middle Income Student Assistance Act. The regulation is not only "inconsistent" with this act but it flatly contradicts and violates section 411. I therefore introduced a resolution of disapproval (H. Con. Res. 84) on March 22, 1978. I expect that the Subcommittee on Postsecondary Education, which I chair, will hold a hearing on this resolution in the very near future. I hope that my colleagues will support this resolution of disapproval if the situation cannot be remedied short of bringing the resolution before the House.

COMMITTEE ON HUMAN RESOURCES,
Washington, D.C., February 2, 1979.

Hon. JOSEPH A. CALIFANO, Jr.,
Secretary, Department of Health, Education, and Welfare, Washington, D.C.

DEAR MR. SECRETARY: We have recently learned that the Office of Education has decided not to fund the independent student provisions of the Middle Income Student Assistance Act, Public Law 95–566. The decision prohibiting the funding for independent student provisions is apparently based upon an opinion by the HEW General Counsel that language in the FY 1979 Labor-HEW Appropriations bill, Public Law 95–480, prohibits funding for independent students regardless of the carryover funds which were not anticipated at the time P.L. 95–480 was passed.

The intent of the language in the Appropriations bill was to protect students already eligible for financial assistance as well as the many new students who became eligible for assistance under P.L. 95–566, and are still dependent on their parents. The question discussed by Senate and House Labor-HEW Appropriations Subcommittee members at the time was simply whether enough money was available to fund all these students. The current estimates of as much as $100 million in carryover funds indicate that there is now ample funding to fully implement the Middle Income Student Assistance Act.

Further, it has been suggested that the effective date in MISAA for independent students of enrollment periods beginning on or after August 1, 1979 indicates the intent of Congress that the expanded eligibility provisions not be implemented until that date. Clearly, this is not the case. For independent students entering school next fall to benefit from expanded eligibility, the new provisions must be implemented immediately.

We anticipate immediate action in conformity with Congressional intent as stated above.

Sincerely,

CARL D. PERKINS,
WILLIAM D. FORD,
JOHN BRADEMAS,
Members of Congress.
WARREN G. MAGNUSON,
THOMAS F. EAGLETON,
CLAIBORNE PELL,
RICHARD S. SCHWEIKER,
U.S. Senators.

AMERICAN COUNCIL ON EDUCATION
ONE DUPONT CIRCLE
WASHINGTON, D. C. 20036

VISION OF GOVERNMENTAL RELATIONS
(202) 833-4736

March 29, 1979

The Honorable William D. Ford
Chairman, Subcommittee on Postsecondary Education
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The undersigned higher education associations applaud and support your introduction of H. Con. Res. 84 to reject the proposed Family Contribution Schedule for the Basic Grant program submitted by the U.S. Office of Education. The schedule should be rejected, because it fails to carry out the law by providing the increased benefits for independent students guaranteed by the Middle Income Student Assistance Act of 1978.

As you and other ranking members of House and Senate appropriations and authorizing committees wrote Secretary Califano on February 2, the clear intent of Congress was that all eligible students receive the benefits of MISAA in FY 79. Nevertheless, the Administration is attempting to defer these benefits until FY 80 for one segment of the student population—some 60,000 independent students who are currently treated inequitably under the Basic Grant program—in order to save an estimated $130 million.

We strongly agree that any Family Contribution Schedule which does not recognize this congressional intent should be rejected. Your resolution is supported by the American Association of Community and Junior Colleges, American Association of State Colleges and Universities, American Council on Education, Association of American Universities, Association of Catholic Colleges and Universaities, Association of Jesuit Colleges and Universities, National Association of Independent Colleges and Universities, National Association of Schools and Colleges of the United Methodist Church, National Association of State Universities and Land-Grant Colleges, and National Association of Student Financial Aid Administrators.

Sincerely,

Charles B Saunders Jr

Charles B. Saunders, Jr.
Vice President for Governmental Relations

ncwge National Coalition for Women and Girls in Education

TESTIMONY PRESENTED BY

CLELIA STEELE

on behalf of

THE NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

at hearings held by

THE HOUSE SUBCOMMITTEE ON POSTSECONDARY EDUCATION

On Implementing Regulations Governing Awards Under

The Basic Educational Opportunity Grant Program

April 4, 1979

to strengthen national policy and practices concerning women and girls in education

ncwge National Coalition for Women and Girls in Education

Good morning, my name is Clelia Steele. I'm here today representing the National Coalition for Women and Girls in Education which is the umbrella organization through which more than fifty non-governmental organizations take joint actions to strengthen federal policies and practices concerning women and girls in education. Normally the precise composition of the Coalition varies from issue to issue and those participants supporting specific positions or recommendations will be identified by name. Supporting my remarks today are the Federation of Organizations for Professional Women, made up of one hundred affiliated organizations with membership of approximately one-half million and the National Organization for Women's Legal Defense and Education Fund. However, due to the time constraints surrounding today's hearings we were unable to contact all of the education, civil rights and women's organizations participating in the Coalition in order to get their official endorsements of this testimony. Therefore, I'm going to limit my discussion at this time to some of the Coalition's long term concerns with equal educational opportunity for women in higher education. If I may, as soon as the Coalition review process is completed, I'd like to add for the record the list of additional organizations endorsing this testimony.

More and more, women are to be found in colleges and universities. The increase in enrollment of women aged 22-35 between the years 1970 and 1976 was 103 percent. Today, women comprise 59 percent of students 35 or older and older women make up the fastest growing segment of the nation's student population. In previous testimony at hearings held by the Department of Health, Education and Welfare, the Coalition pointed out that women comprise the greatest number of the client group for Basic Educational Opportunity Grants (54 percent in Fiscal Year 1976). Recommending statutory modifications to ensure equal access to financial aid available through the BEOG programs, the Coalition also pointed out that the then existing distinctions between independent and dependent student status should be eliminated or modified to preclude the adverse effect of this distinction on non-traditional, independent women students - a large number of whom are homemakers finally returning to school for their own education after all the children have graduated, widows, divorcees with children of their own to support or displaced homemakers.

We hear a great deal these days about those women who suddenly find themselves "displaced" or head of the household. After years of being ignored, unseen by society, their frequently sorry lot is finally getting some attention.

As the Chair of this Subcommittee has stated, a major key to the survival of these women is education and training to equip them with the marketable skills they rarely had time to acquire during their years of

homemaking and childrearing. Yet, still today, the obstacles faced by many of those women in financing that education can prove insurmountable.

If I stress the educational needs of the non-traditional, "independent" woman student it's because her situation is very real to me. Ten years ago I found myself one of those millions of women. I know the obstacles placed in my way when I considered going back to school. I know the problems faced by my children when they were independent students struggling for an education. Let me share with you just one example. One of my sons, a student at Western Michigan University in Kalamazoo, applied for assistance under the BEOG program. At the time his entire assets totaled $305 which had been earmarked for fuel oil for the winter. With all respect for Mr. Ford's home state, the winter climate in Kalamazoo may be described in one word - dreadful. Heating is not a frivolous luxury. Well, my son was informed that, as an independent student, his grant would be smaller than he had expected because of his "assets." The fuel oil ran out.

I'm angry that this happened to him. I'm angry that all the non-traditional independent women students, starting further behind on a harder road than the traditional student, should be penalized, not helped, in their efforts to better themselves and their children through education.

I find it extraordinary that, under the guise of a technicality, HEW could even consider waiting to implement the legislation correcting the inequity between Basic Educational Opportunity Grants to independent and dependent students. Discussions of the fine points of legal technicalities won't do to put supper on the table for the children or heat the house.

I understand that the government might save up to $130 million by postponing implementation of the Middle Income Student Assistance Act of 1978. This is a paltry sum indeed, when compared with some of the items in the federal budget and an unacceptable economy made at the expense of financially strapped, hard working, motivated non-traditional students seeking to better themselves through education, an unacceptable economy which will have a disproportionate effect on millions of women. Such a government policy can only be construed as short-sighted and stingy.

Again, the National Coalition for Women and Girls in Education affirms its commitment to the principles of equity contained in the Middle Income Student Assistance Act of 1978. Thank you.

STATEMENT OF DALLAS MARTIN, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

Dr. MARTIN. Thank you, Mr. Chairman.

It is indeed our pleasure again to appear before you today and, like you, we and our members regret that it is necessary to have this hearing today because the administration has taken certain kinds of action to ignore certain legislative provisions in the Middle Income Student Assistance Act.

I would like to review briefly a couple of the historical points even though you have outlined them in careful detail, because I think it might be good that the record reflect these.

The current inequities in the basic grant program which affect the treatment of independent students is not a new issue with the postsecondary education community or the Members of Congress or the administration.

The record will show that in hearings before both this committee and the Senate Subcommittee on Education, Arts, and Humanities in 1977, we testified on the Notice of Proposed Rulemaking governing the basic grant family contribution schedules at that time. There were serious inequities in the treatment of independent students.

It is interesting to note that earlier in the same year Commissioner Ernest Boyer testified before the same committees and expressed similar concern about the existing inequities and stated his belief that changes and modifications in the family contribution schedules were needed to respond to the need of the growing independent student population enrolling in postsecondary education.

At those same hearings on the 1978–79 family contribution schedule, Deputy Commissioner of the Bureau of Student Financial Assistance Leo Kornfeld pledged to us that he and his staff were going to review carefully the definition and treatment of independent students in order to make the necessary modifications in the next year's schedules.

Following those hearings, as you are well aware, Mr. Chairman, President Carter announced a $1.46 billion student aid package designed to assist middle income students and others to meet the rising college costs. That same day you and 24 cosponsors from both sides of the aisle introduced the administration's bill, H.R. 10854, which we have before us today. On the following day, in a joint hearing before the House and the Senate, Secretary of HEW Joseph Califano, Commissioner Boyer, and Assistant Secretary of Planning and Evaluation Michael O'Keefe outlined the features of the President's proposal.

It is interesting to note, Mr. Chairman, that on page 3 of the President's bill starting on line 13, you will find exactly the same language proposed by the administration that is now contained in the final text of the Middle Income Student Assistance Act, which was adopted by the Congress on October 14, 1978, and signed into law by the President on November 1.

At no time during the debate on this measure did any representative from the administration oppose or even question the aforementioned provisions which affect the treatment of the independent students.

To the contrary, on September 28, 1978, in testimony before the Subcommittee of Education, Arts, and Humanities of the Senate Human Resources Committee, Deputy Commissioner Leo Kornfeld, Director of the Division of Policy and Program Development, Peter Voigt and Deputy Assistant Secretary for Legislation, William Blakely, stated that the family contribution schedules for 1979–80 would change the method of determining the family size offset for the single independent students with dependents and further would change the asset treatment for independent students with dependents.

This portion of their testimony clearly documented the logic and reason for these changes and was applauded by all of us who had felt these changes were long overdue.

Following the approval of this family contribution schedule for 1979–80, the passage of the Labor-HEW Appropriations Act and the President himself signing the Middle Income Student Assistance Act on November 1, 1978, institutions of postsecondary education, representatives from HEW, and even Members of Congress, began to go out and tell the American public that more student aid would be available in fiscal year 1979 as a result of these actions.

In fact, it was not until well after the President's fiscal year 1980 budget proposal was announced that any hint was given by the administration that the independent student provisions of MISAA would be deferred until the 1980–81 academic year.

Upon hearing this decision, those of us in the higher education community initially thought there simply was some confusion over the provision contained in the fiscal year 1979 HEW-Labor Appropriations Act and the final provisions of MISAA.

Several of us conferred with staff from the authorizing and appropriations committees and learned that the original intent of the language contained in the fiscal year 1979 Labor-HEW Appropriations Act was simply to protect those students who were already eligible for financial assistance prior to the passage of MISAA in the event the 1979 basic grant appropriation was not sufficient to fund all students.

Upon further investigation, the Members of the House and Senate Labor-HEW Appropriations Subcommittee discovered there may be as much as $700 million in BEOG carryover funds that will be available this year, and therefore there is more than ample funding to fully implement all the provisions contained in the Middle Income Student Assistance Act.

A description of the appropriations and authorizing committees' interpretation of the provisions and a statement of their desire for corrective action, as you and Mr. Buchanan have stated, was sent to the Secretary of HEW on February 2 by several members of both committees.

Unfortunately, it now appears that there was no confusion on the part of the administration regarding the provision of the two public laws but rather a deliberate decision was made by the Office of Management and Budget to simply ignore the law in what they call "a need for fiscal constraint."

Proof of this action on their part can be found in the basic grant family contribution schedules which were published in the March

23, 1979, Federal Register. In the general background section on page 17898, the following statement appears:

> This law specified a 10.5 percent rate for assessing parental discretionary income and made two changes in the treatment of independent students. One of these changes required that the family size offset for the single independent student would be computed in the same way that all other family offsets are computed. The other provided that the assets of independent students with dependents would be assessed in the same manner as those of the parents of dependent students.
>
> However, it was decided to postpone implementation of these two changes in the treatment of independent students until the 1980-81 award period because of the need for fiscal constraint with respect to fiscal year 1980 outlays. Accordingly, these two changes are not included in the 1979-80 family contribution schedules.

It is interesting to note that we are dealing with carryover funds from fiscal year 1978 that we are talking about for expenditures in 1979, and yet they are already looking ahead for fiscal constraint in fiscal year 1980 budgets, which is in and of itself confusing.

From this statement which is contained in these family contribution schedules, we can only conclude that certain parties within the administration have decided to make their own decisions regardless of congressional intent, the provisions contained within the law, or the promises made by the President.

While such action clearly would be judged illegal, in NASFAA's opinion, it is a moral issue. A commitment was made to more than 70,000 independent students who herebefore had not been eligible for the program. In addition, another 612,000 students would have their awards increased.

This commitment was made to these students by their Government, signed into law by their President, and advertised in good faith by all parties and personnel from postsecondary education institutions. This commitment has now been broken.

Mr. Chairman, we urge you and the members of this subcommittee and your colleagues in Congress to use your authority to disapprove these regulations which were submitted to you on March 16, 1979.

In making this recommendation to you, our members fully realize that accurate basic grant award announcements to deserving students will be unnecessarily delayed due to the failure of the administration to submit final family contribution schedules which reflect the provisions of the law.

We have reviewed our recommendations carefully in light of this impact and we have conferred with the affected parties. We all agree that the administrations's decisions to deny authorized assistance to a significant portion of our most needy students cannot be tolerated.

In the meantime, our members have been instructed to proceed with their internal student aid packaging operations and to use the results that are being produced currently on the student eligibility reports.

Since the Bureau of Student Financial Assistance currently is also producing an alternate student eligibility index on each SER, which accurately reflects the provisions that would be contained for independent students if MISAA was followed, we will be notifying each of the individual students affected of the differences in their awards and explain to them that based upon an OMB deci-

sions that their 1979-80 basic grant award has been reduced or denied.

I am certain, Mr. Chairman, that you and the other members of Congress and the administration will certainly be hearing much more from these taxpaying citizens in the next few months unless all of the middle income student assistance provisions are adhered to by HEW.

Let me add, Mr. Chairman, that we also now understand that the administration is considering coming back before the congressional Appropriations Committees to ask for authority to carry over this money.

As you and I know, if we look at the law carefully, there is a provision in that law that says if the program is not fully funded, they must go back and make adjustments unless they get this permission from Congress to carry over this amount of money.

We realize the law was actually changed in 1976, increasing the maximum basic grant award up to $1,800, even though a decision was made the prior year by the administration to again use fiscal constraint and only go to a maximum award of $1,600.

If we followed the law clearly at this time, it is possible that if Congress asked for the authority to bring this money forward, a valid point could be made since the law states the maximum award should have been $1,800 and we have been forced to reuse rateable reductions, that we should go back for those 2.5 million students this past year and reallocate to them the excess of more than $700 million which is currently available.

I realize this would be a tremendous administrative burden. It would obviously cause some problems for institutions in making adjustments, but it would certainly be a serious problem for the administration and the Bureau of Student Assistance. But yet on the other hand, if we have laws and these provisions are made and we have made adjustments and we turn around and refuse to follow them, I would suggest and I think our members would suggest that perhaps this is another point you may wish to consider which we certainly will share with the Appropriations Committees when such authority is asked for, if they fail to recognize at this time the need of these independent students.

Thank you, Mr. Chairman, for the opportunity to be here. I am willing to answer any questions you or the other members of the committee have, after the other members of the panel have finished or at whatever time you prefer.

Mr. FORD. Thank you very much. If it is agreeable to the committee, we will proceed with the other members of the panel and then address questions to the panel at the conclusion of all statements.

Our next witness is Mr. Joel Packer, representing the U.S. Student Association.

STATEMENT OF JOEL PACKER, LEGISLATIVE DIRECTOR, U.S. STUDENT ASSOCIATION

Mr. PACKER. Thank you, Mr. Chairman.

I would like to thank you for the opportunity to be here today. In addition to testifying on behalf of my organization, the U.S. Student Association, I am also presenting my statement on behalf of

the Coalition of Independent College and University Students known as COPUS.

Let me state at the offset that USAA supports the resolution of disapproval of HEW's family contribution schedule.

We are shocked and appalled at the administration's having callously decided to deny 70,000 low-income, independent students the money they are entitled to by law. This decision is even more upsetting by the administration's bungled attempts to rationalize delay in implementing the provisions of MISAA. Compound this with the fact that these improvements were included in the administration's own bill and the situation becomes even more mind boggling.

While Dallas traced the history of this issue very well, let me add a few bits and pieces and emphasize a few other points.

We have obtained an internal memorandum from OE which was written by the Acting Director of the Division of Policy and Program Development of the Bureau of Student Financial Assistance to the Commissioner of Education on December 14, 1977. This memo presents various issues that were in need of decision regarding the family contribution schedule for the 1979–80 academic year, which is the one we are still agonizing over right now.

The first issue discussed is the treatment of assets of independent students with their own dependents. As you are well aware, the current schedule gives these individuals no asset reserve and sets an assessment rate of 33 percent.

The OE memo states:

> This method of assessing assets has been subject to criticism since the inception of the program specifically as it affects independent students with dependents of their own. Critics of the current procedure argue that since independent students with dependents have essentially the same family responsibilities as the parents of dependent students, the method for assessing their assets should be equated with that applied to the assets of the dependent student's parents rather than to that for the assets of the dependent student himself. Although both the dependent student and the independent student with dependents are equally the beneficiaries of their education, it is unrealistic to consider their assets equally available for liquidation to meet educational costs. To do so ignores the fact that the independent student with dependents has many additional obligations.

This fascinating memo goes on to present two options for decision, A and B. Option A would have made no improvement in asset treatment. The only pro presented for this argument is that it would "avoid increased program costs." Option B would revise the asset treatment so that it would be the same as that used for parents of dependent students, the same change MISAA made.

Three pros are listed for this option as follows: One, this provides more equitable treatment for independent students with dependents by recognizing their additional family responsibilities; two, implementation of this proposal provides fair means of resolving the problem of asset treatment which has existed since the inception of the basic grant program; and three, the proposal is likely to satisfy the criticism on this subject which has been received from the financial aid community, the applicant population, and Members of Congress.

The recommendation in this memo suggests that option B be adopted as "part of the overall effort to provide more equitable treatment of independent students."

The second issue discussed in this memo is that of the family size offsets for single independent students. The memo notes:

> Since the inception of the program, there has been considerable criticism of the level of the family size offset for the single independent student. The primary argument presented is that the offset is unrealistically low and as a result eliminates a number of students from becoming eligible. In addition, the treatment of the single independent student is not consistent with the treatment of other applicants, either dependent or independent, with dependents of their own, for whom the full-size, low-income threshold allowance, as determined by the reported family size, is given.

Once again, the memo goes on to present two options, A and B. Option A would have maintained the current procedures for computing the family size offset. Again, the only pro listed for this is it would avoid any increased program costs. Option B would revise the method so that it is consistent with that used for all other applicants, again the same that MISAA does.

Two pros are listed for this option: One, implementation of this proposal provides a logical and fair means of eliminating an inequity which has existed since the inception of the program. Two, the proposal should satisfy the criticism on this issue from the financial aid community, the applicant population, and Members of Congress.

One con was given for the first option which was to make no change. These are the Office of Education's own words.

> The method of computing the family size offset for single independent students has received more criticism than any other single item in the family contribution schedules, and it is the least defensible in terms of equity. Considerable public and congressional criticism will result if we make no attempt to remedy this inequity as part of our overall review of the treatment of the independent student and will reflect adversely on the credibility of our study.

This internal memo shows in perfect clarity that OE did study this issue and it did receive criticism since the inception of the program and it believed that changes needed to be made to remove inequities. All this before anyone heard of MISAA.

I could stop my statement here and still have presented a convincing case of the Office of Education ignoring inequities and criticism but much more than that is at stake.

Let me jump over the action during the session because Dallas already talked about that except to note as Dallas did that at no point through the entire session did we or anyone else in the higher education community hear any concern from the administration about including the improvements for independents as part of the legislation.

We were never led to believe they were opposed to this or they would fight it later on.

Further proof of the administration's commitment to the independent students came when the proposed family contribution schedule was published on August 14, 1978. The schedule at that time included both the improvement in asset treatment for independents with dependents and the increase in the family size offsets for single independents.

The only inkling that there may have been any problems took place when Congress passed the final conference report on the 1979 Labor-HEW appropriation bill. As stated this report did contain a clause that said, "The family contribution schedule shall retain the

provisions relating to independent students as were in effect for the academic year 1978–79."

An explanatory statement was added which I think is important. "The managers emphasize that the conference agreement of BEOG's was an unusual action taken only because sufficient time was not available to address this matter in the regular legislative process."

As someone present at the conference committee meetings, there is no question in my mind that the language was added because it seemed at that point that MISAA was not going to pass and that the $2.6 billion that was appropriated would not be sufficient to both expand eligibility to middle income students and make the improvements for independent students.

MISAA of course did pass and its provisions supersede those of the appropriation bill. The $2.6 billion appropriation turns out to be more than sufficient since there is carryover funding from the previous fiscal year 1978.

The administration after the session ended did not give anyone any reason to believe that they would interpret this any differently. USSA as well as all other higher education associations and Members of Congress proceeded to inform our constituents of the provisions of MISAA including the independent student improvements.

We first started hearing rumors that problems would pop up shortly before the President's budget was released. At a briefing on the budget conducted by HEW 2 days before the official release, it was discovered that indeed the administration was planning on ignoring the statute.

When questioned on this, the response was "legal problems." As the battle heated up, OE was asked for a copy of the legal opinion by the HEW general counsel which came up with these "legal problems." Interestingly, it was discovered that no such legal opinion existed, at least not in written form or at least not in written form that anybody has been able to get out of the hands of the administration.

While the legal argument seemed like a good way for HEW to justify their decision, as you have already noted, several Members of Congress including yourself, wrote to the Secretary stating as the people who wrote the law, they believed firmly that the provisions of MISAA clearly supersede what was in the appropriations bill and urged immediate implementation of these actions.

With the legal argument seemingly shot out from under them by the people who wrote the law, HEW has now lapsed into fiscal restraint as the rationale. While we are all cognizant of the fiscal problems facing our country, the adminstration just does not have the authority to simply not spend funds appropriated by the Congress.

Mr. Chairman, it is astounding that the administration persists in its illegal and immoral decision to deny students the money they are entitled to and are expecting.

The record has shown the need of these students for additional funding. The administration's own documents point out the inequities currently in place. The President's own bill included these

changes. The administration testified several times in support of them.

The proposed family contribution schedule included them. The President praised the bill as compatible with his program. The Congress has appropriated sufficient funds. Key Members of Congress have urged implementation.

The entire higher education community has rallied in support of these provisions.

Yet we are here today still looking for ways to force the administration to do what they have promised and pledged they would do, which is to provide some simple justice to 70,000 deserving students.

USSA must urge this subcommittee and the full Congress to adopt a resolution of disapproval. We realize the gravity of this request. Possible delays in giving students their awards may result. If this situation is resolved in the next 2 months, we do not envision any major program disruption.

In closing, Mr. Chairman, let me state that we all owe you a great debt and the entire committee a great debt for the successful struggle to pass MISAA last session. I hope we can soon have another reason for rejoicing.

Thank you again for the opportunity to be here.

Mr. FORD. Thank you.

Ms. Clelia Steele on behalf of the National Coalition for Women and Girls in Education.

STATEMENT OF CLELIA STEELE, NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

Ms. STEELE. Good morning. My name is Clelia Steele. I also want to thank you for a chance to be here this morning.

I am here today representing the National Coalition for Women and Girls in Education which is the umbrella organization through which more than 50 nongovernmental national orgainzations take joint actions to strengthen Federal policies and practices concerning women and girls in education.

Normally the precise composition of the coalition varies from issue to issue and those participants supporting specific positions or recommendations will be indentified by name.

Supporting my remarks today are the Federation of Organizations for Professional Women, made up of 100 affiliated organizations with membership of approximately one-half million and the National Organization for Women's Legal Defense and Education Fund.

Due to the time constraints surrounding today's hearings we were unable to contact all of the education, civil rights, and women's organizations participating in the coalition in order to get their official endorsements of this testimony.

Therefore, I am going to limit my discussion at this time to some of the coalition's long-term concerns with equal educational opportunity for women in higher education. If I may, as soon as the coalition review process is completed, I would like to add for the record the list of additional organizations which will be endorsing this testimony.

I think you may understand that while participatory democracy is laudable perhaps sometimes in practice it can be just a bit slow.

More and more, women are to be found in colleges and universities. The increase in enrollment of women aged 22 to 35 between the years 1970 and 1976 was 103 percent. Today women comprise 59 percent of students 35 or older and older women make up the fastest growing segment of the Nation's student population.

In previous testimony at hearings held by the Department of Health, Education, and Welfare, the coalition pointed out that women comprise the greatest number of the client group for basic educational opportunity grants. It was 54 percent in fiscal year 1976.

Recommending statutory modifications to insure equal access to financial aid available through the BEOG programs, the coalition also urged that the then existing distinctions between independent and dependent student status should be eliminated or modified to preclude the adverse effect of this distinction on nontraditional, independent women students, a large number of whom are homemakers finally returning to school for their own education after all the children have graduated, widows, divorcees with children of their own to support, or displaced homemakers.

We are hearing a lot these days about those women who suddenly find themselves displaced or head of the household. After years of being ignored, unseen by society, their frequently sorry lot is finally getting some attention.

As the Chair of this subcommittee has stated, a major key to the survival of these women is education and training to equip them with the marketable skills they rarely had time to acquire during their years of homemaking and childbearing. Yet still today the obstacles faced by many of those women in financing that education can prove insurmountable.

If I am stressing the educational needs of the nontraditional independent woman student it is because her situation is very real to me. It is not an abstract thing at all. Ten years ago I found myself one of those many millions of women. I know the obstacles placed in my way when I considered going back to school.

I know the problems faced by my children when they were independent students struggling for an education.

I would like to share with you one example. One of my sons, a student at Western Michigan University in Kalamazoo, applied for assistance under the BOEG program. At that time his entire assets totaled $303, most of which had been earmarked for fuel oil for the winter.

With all respect, Mr. Ford, for your home State, I think you cannot argue with me that the winter climate in Kalamazoo may be described in one word, it is dreadful. Heating is certainly not a frivolous luxury there, it is a necessity.

My son was informed that as an independent student, his grant would be smaller than he had expected because of his assets, all $303 of them. The fuel oil ran out. He stayed in school and got pretty cold that winter.

I am really angry that this happened to him. I am angry that all the nontraditional independent women students starting further behind on a harder road than the traditional student should be

penalized and not helped in their efforts to better themselves and their children through education.

I find it extraordinary that under the guise of a highly questionable technicality, HEW could even consider waiting to implement the legislation correcting the inequity between basic educational opportunity grants to independent and dependent students.

Discussions of the fine points of legal technicalities will not do to put supper on the table for the children or to heat the house.

I understand that the Government might save up to $130 million by postponing implementation of the Middle Income Student Assistance Act of 1978. This is a paltry sum indeed when compared with some of the items in the Federal budget and it is an unacceptable economy made at the expense of financially strapped, hard working, highly motivated nontraditional students seeking to better themselves through education. It is an unacceptable economy which will have a disproportionate effect on millions of women.

Such a Government policy can only be construed as shortsighted and stingy, just plain wrong.

The National Coalition for Women and Girls in Education applauds this committee's concern and their efforts for independent students. It affirms its commitment to the principles of equity contained in the Middle Income Student Assistance Act of 1978.

Thank you very much.

Mr. FORD. Thank you.

Jerry Roschwalb, director, Office of Government Relations, Higher Education, National Association of State Universities and Land-Grant Colleges.

STATEMENT OF JEROLD ROSCHWALB, DIRECTOR, OFFICE OF GOVERNMENTAL RELATIONS/HIGHER EDUCATION, NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES

Mr. ROSCHWALB. Thank you, Mr. Chairman.

As you and your colleagues on the subcommittee will see from the front page of the testimony, I am here representing 12 associations, the memberships of which probably comprise every single college and university—2 year institution and 4 year institutions—in the United States.

It is this group that jointly wishes to have its voice heard this morning and we are grateful for the opportunity to appear.

Because of your opening statements and those of your colleagues as well as the statements just given by my colleagues at this table, it is possible for me to abbreviate my comments greatly.

I think my role might be to simply summarize and perhaps place some emphasis on a few points.

We know the facts. They have been stipulated. We all understand what took place during the past year. We know the circumstances of independent students. We understand the inequities, particularly among women and older students.

We understand what took place last year when the Middle Income Student Assistance Act, which you gave such leadership to, was being developed. We know the promises that were made by the administration down to the November 1 signing of the bill in the

White House. These are not questionable. There is nothing open for discussion on that.

We are, therefore, down to a simple question of the nature of the behavior of this administration.

I have taken the liberty in my formal testimony to cite several quotations, and they are not out of context and they are correct, from the acceptance speeches by Jimmy Carter, then Governor Carter, when he accepted the nomination for running for the Presidency by his colleague, and by then Senator Mondale and from other speeches during the campaign.

This was an administration that was going to bring honesty and was going to bring the enforcement of the law. It is perhaps coincidental and certainly interesting that in this morning's Washington Post there is an article by Coleman McCarthy called "The Califano Brand," in which the Secretary of HEW is praised in two instances for refusing to give in to political pressures and not to enforce the law.

There is one sentence worthy of putting in the record. "It is a worthy celebration that the Federal Government has an official that takes the law of the land more seriously than the laws of politics."

On this particular instance I might say it would be very fine if in OMB there were some people who not only wished to follow the law of the land but also the laws of politics, since this obviously is the most imprudent political activity we have witnessed in a long while.

On March 20, in this very room and at this very table, HEW Secretary Califano, in response to questions regarding this issue, stated with remarkable candor that the administration did not intend to follow the law for budgetary reasons only. It is difficult to know how to characterize that form of lawlessness particularly in an administration which campaigned for election on the theme of trustworthiness, straight forwardness, fair treatment of the citizenry, and an honest execution of the laws.

What is especially troubling is the possibility that officials in the Federal Government who are maintaining this obdurate illegal position are betting on the pressures of time to force the Congress to go along with their scheme.

We know it is imperative that the family contribution schedule be approved and disseminated to colleges and universities across the country relatively soon, so that the packaging of Federal student assistance can begin in time for the rapidly approaching new academic year.

In less polite circles we believe the term for such behavior is blackmail. We respectfully submit, Mr. Chairman, that neither the Congress nor the higher education community, particularly the students in the institutions that exist to serve them, can afford to surrender to such pressures.

Mr. Chairman, when Secretary Califano appeared before you, you made reference to the possibility of having to play a game of cnicken with the administration on this issue. While I hesitate to correct the chairman of this subcommittee, I must note that on the dragstrips of my adolescence, chicken was played by two equally

irresponsible participants heading down a road daring the other to fail to turn off. The game being played now is something else.

The Congress and the country are traveling down the legal side of the road, the law is clear. The administration has deliberately crossed that white line and is traveling in the wrong direction. If there is a collision, if students and their families are injured because of this behavior, it will not be the Congress of the United States nor the institutions or their officials responsible for administering student aid but the administration alone that has created that unhappiness.

We hope that officials in the administration will recognize the potential consequences of their irresponsible behavior.

This is no longer the ineptitude witnessed last summer, an ineptitude which on the floors of the Congress was called a betrayal, when in the midst of the campaign to enact MISAA, the administration sent representatives to peddle the notion of cutting student aid funds, undermining the very Members of Congress who were campaigning for the enactment of administration-supported legislation.

This does not even belong to the dubious-wisdom category of sending Congress proposals for the next fiscal year's student aid programs that fail to meet minimum figures required by the law. It is reminiscent of an earlier administration that sometimes looked upon the law as merely a point of departure for preferred action. This is, I repeat, blatant lawlessness.

The associations I represent today commend you for introducing House Concurrent Resolution 84 which would reject the administration's most recently proposed family contribution schedule.

We believe that action may help the administration understand that you are serious and mean business. We urge you to stand firm until the administration consents to join the overwhelmingly preponderant majority of American society that follows the law.

I thank you, Mr. Chairman and members of the subcommittee, for the opportunity of presenting these observations.

I would be pleased to try to respond to questions.

Mr. FORD. Thank you very much.

Mr. Roschwalb, you might be accused of cruel and unusual treatment by quoting back to any of us our statements made in the moment of passion as we seek election.

I am going to take those quotes from the first page of your statement and I hope to use those in my next election. I think they are three great paragraphs.

I would also like to observe there is a unique characteristic involved in this particular action. This is not the first time this committee has had a confrontation with administrations over the 15 years I have been on the committee involving the question of funding programs after we have had them declared as the policy of this country through the enactment of legislation.

There is a unique characteristic in this particular confrontation in that in the past when we talked, for example, about backing off on impact aid or backing off on title I funds and so on, we were talking about a kind of unidentifiable statistical mass of people out there without a very clear understanding of what the immediate

impact would be on their educational experience if we were not successful in getting the funding.

In this case we have a clearly identifiable population of people who are now in school or who were contemplating returning to school if we were successful in making these changes, who actually participated in developing the consensus around this concept that led to enactment of this kind of treatment or our proposed treatment for the independent student as a matter of public policy.

We are not dealing with an unidentifiable mass of people where we have no idea what the impact will be. We know that between 60,000 and 70,000 people who would have been going to school this fall have their education in jeopardy, either the continuation or the beginning of their education experience in jeopardy as a direct result of this action and hanging in the balance as we weigh the outcome of this confrontation.

Furthermore, when I see Joel Packer sitting here representing the students, I would like to say what I have said many times across this country to education groups since the enactment of the Middle Income Student Assistance Act last year. I must say no one has talked to more people in more places in this country since last October than I have telling them what a great thing the administration and the Congress has done to bring equity to people and expand the scope of our support for postsecondary education.

Every opportunity I have made it very clear that in my years on this committee I never had seen a more effective, direct and successful lobbying effort than that launched by the students in this case, in the fight between tax credits on the one hand and the President's alternative, the Middle Income Student Assistance Act, on the other.

I think it is important, when we hear the casual callous comments that people are quick to make about the quality of today's college student, to remember that these young people worked this entire Congress in a very effective way, exercising their right under the Constitution to educate, inform, and persuade our colleagues to pass this law.

On the very eve of the passage of the act in the last session of Congress, the students canvassed the entire House of Representatives and presented me with a vote count on how many men and women in the Congress they believed were committed to support the bill and vote for it if we were able to get it to the floor.

This was an extremely important factor in our ability to convince the leadership of the House to schedule us for consideration of the bill on the floor. And what is even more pleasing to me is that I am sure some of the leadership thought I must have been exaggerating about the amount of support we had, but I relied on the numbers the students turned into us as their appraisal of how many commitments they had and it is one of the most accurate prevote counts I have ever seen.

I am a national whip and have participated in the leadership's whip operation for several years where theoretically we are pros at doing this and pros at assessing the House and assessing the value of a commitment.

These students in an organized way produced for us not only a tremendous lobbying effort but one of the best readings of the

sincerity of the House I have seen in a long time. I can well understand that the constituents they were representing might very well now clearly have serious reason to believe their government is not to be trusted.

I appreciate the fact that all of you have commented one way or another on this aspect of it. Not only as a Democrat but as a member of this great body and someone privileged to participate in the policymaking process at the Federal level, I want you to know I believe this committee and each and every Member on both sides of the aisle feels very strongly about the position we now find ourselves in, in trying to defend against the possibility that Uncle Sam through us and through the administration would once more break his word to his people.

I am particularly pleased to have this very direct testimony and we will hold the record open for the rest of the womens' organizations. I think it will be persuasive with many of our colleagues.

I find myself again a little bit embarrassed because throughout the consideration, from the very early discussions with the administration as we put MISAA together, I used an example. As a matter of fact, I expect that example was responsible for a good many of the womens' groups that had not previously noticed our activity in this regard to come forward and provide very substantial support for the President's position vis-a-vis the alternatives that were very close to being adopted by the Congress.

We used in the very first hearing on MISAA a hypothetical person in order to explain how this particular provision of the law would affect them. We took a divorcee with two children, with $3,600 a year coming in to support her and the two children from child support, a $9,000 equity in her home and furniture and as little as $3,000 in part-time income to support them. In other words, as little as $6,600 to try to support a family of three.

Her entitlement if she chose to try to go to school would have been under the existing law, zero, none. The entitlement under the Middle Income Student Assistance Act became a full BOEG of $1,800.

One need not be very familiar with the facts of the real life that exists out there. In 1976, as I recall, when the committee did its report on the higher education amendments of that year, we observed that we passed some time in that period the point where we were from then on able to say that the majority of people being educated beyond high school in this country was made up of a population over 22, the traditional graduation age for the traditional student.

That age figure is constantly creeping up. We find in the community and junior colleges now that the average age of a student is 30. The average age of a female student in community and junior colleges nationally is 35.

What kind of people are they? The description given on behalf of the National Coalition for Women here today is very clear and should make it possible for anyone to understand that we are reaching out to the fastest growing, most needy population there is.

We are dealing almost entirely here with a highly motivated group of people who are seeking their education for the primary

purpose of increasing their economic status because they have dependents that are absolutely requiring they do this.

It is a place where very frankly I think the argument can be made that if you want to talk about controlling inflation and you want to talk about increasing the productivity of this country, this money that we are talking about is more likely to produce some bang for our buck than any other money we are going to talk about in this session of the Congress.

I hope we can urge upon the planners at OMB a consideration of the future impact of this action as well as the immediate impact of a $130 million, one time, 1 year savings in the budget.

It is not a $130 million, one time, 1 year savings in the budget for the 70,000 students who are in need at the moment.

Very frankly, if we are not able to turn this regulation around and meet the promise that we made, it makes liars of all of us, first who sold this legislation to the Congress as an alternative to other attractive ways in which to finance education and second, to the people involved.

I suspect we have, to use the analogy of contract law, we have caused a lot of people to change their position in reliance upon our promises and I think we have a legal contract now binding upon us to fulfill that promise because they have changed their position.

I am pleased to hear the testimony also this morning that it would be possible in your opinion as people who are closest to the real operation of these programs to reject this regulation and resubmit it to the HEW and have it returned to us in plenty of time to meet the time constraints necessary so there will be no interference with the forthcoming academic year.

Mr. Jeffords?

Mr. JEFFORDS. Thank you, Mr. Chairman.

I certainly want to echo your comments and agree with everything you have said. Also with your permission at this time, I have a very interesting letter from the Vermont Institute of Community Involvement, with a number of examples which illustrate what you have been saying.

With your permission, I would like to introduce that into the record.

Mr. FORD. Without objection, it will be entered into the record at this point.

[The letter follows:]

MAR 1 1979

VICI

VERMONT INSTITUTE OF COMMUNITY INVOLVEMENT
90 Main Street, Burlington, Vermont 05401
(802) 862-9616

February 22, 1979

Congress James M. Jeffords
429 Cannon House Office Building
Washington, D.C. 20515

Dear Jim,

In revising the formulas for determining the family contribution in the calculation of Basic Educational Opportunity Grants (BEOG), the Middle Income Student Assistance Act (MISAA) which was passed by the Ninety-Fifth Congress went a long way toward providing much needed additional funds to students who would otherwise be without adequate resources to finance a post-secondary education. As a financial aid administrator, I greatly appreciate this relief on behalf of the students I serve.

While I realize that much of the motivation for the changes authorized was to expand BEOG funding to the so-called middle-income family with dependent students, MISAA also authorized a much more realistic treatment for low-income independent students, specifically by allowing a single independent "family size offset" of $3400 (instead of the current $1100) and by instituting an asset protection allowance for independent students with dependents.

As the student population which I personally serve is 95% independent, according to the federal guidelines, and is almost as predominantly low-income (below current federal poverty levels), I was overjoyed to see the greater educational opportunity which the revised family contribution schedules would provide.

Now, however, I have been hearing that, due to conflicting language between MISAA and the FY 1979 Appropriations Act, also passed on October 14, 1978, the Department of Health, Education, and Welfare is interpreting the intent of Congress to be that changes in the independent student model should be deferred until FY 1980. I am outraged by the inequities of HEW's interpretation--which would, apparently, allow a minimum BEOG to be awarded to a dependent student whose parental family income ranges up to $25,000 but would deny any BEOG award to many independent students living below the federal poverty level.

VICI believes in and practices non-discrimination and Equal Opportunity

For a savings nationally of an estimated $130-150 million (only 6% of the $2,600 million FY 1979 BEOG appropriation), HEW appears to be choosing to continue to make it more difficult for independent students to secure adequate funding to pursue a post-secondary education.

The following data and analyses of typical individual cases may help to illustrate the impact of this decision for Vermont and for individual self-supporting Vermonters (enclosed are the calculation sheets, based on the current family contribution schedules--the only official formulas currently published--for these specific cases):

Case A: A single, self-supporting person, with no assets and no unusual expenses as defined by the BEOG formula, who worked a full-time job (40 hours per week) at the 1977 minimum wage of $2.30 per hour for 26 weeks and was then laid off from work and collecting unemployment benefits of $46 per week for 26 weeks, with a total 1977 income of $3585, and who began working again full-time at the minimum wage of $2.65 per hour in January of 1978 and worked until entering school in September 1978, for a total 1978 income of $3675, would have a BEOG eligibility index of 1866 from the base year 1977, and would, thus, be totally ineligible for a basic grant for the 1978-79 year.

Case B: A single 30-year-old divorced woman with two children, receiving ANFC and having some part-time earnings (for which she gave up some of her ANFC eligibility for the period during which she worked), having a total 1977 income of $4332, with no unusual expenses, but with home equity of $9000, would have a BEOG eligibility of 1860 and would, thus, be ineligible for a basic grant for the current year.

Case C: The wife in a mid-thirties-aged couple, with two school-aged children, working part-time and wishing to earn a degree in order to find more satisfying career opportunities, whose husband is self-employed as a woodworker in a "cottage industry," together having a total 1977 income of $5486, with $500 unreimbursed elementary school tuition, no unusual expenses, and home equity of $11,500, would have a BEOG elegibility index of 1714 and would, thus, be ineligible for a basic grant in 1978-79.

Case D: A single, Vietnam-era veteran, wishing to be a full-time student for the full 12 months in the 1978-79 year and thus receiving G.I. Bill benefits ($311 per month) of $3732, who had worked in 1977 less than the amount of time necessary for filing a BEOG Supplemental form using 1978 data or for receiving unemployment benefits, whose total 1977 income was $1500, with no unusual expenses and no assets, would have an eligibility index of 1700 and be ineligible for a basic grant.

Using the family contribution schedule authorized by the Middle Income Student Assistance Act, all of these cases (which are quite typical of the students I counsel) would be fully BEOG eligible.

In analyzing the student population currently at my institution, I find that out of the 74 independent students for whom I have adquate financial data, the following are the percentages of BEOG eligibility under the current formulas and under the MISAA formulas:

	1978-79	MISAA
% with full eligibility	47%	85%
% with partial eligibility	38%	11%
% with no eligibility	15%	4%

The average increases in BEOG awards which would occur if the MISAA formulas were applied to the 1978-79 year (maximum award at $1600) are:

for those partially eligible at present $ 251
for those currently ineligible, but eligible under MISAA $1133.

Further, the number of students ineligible under the current formulas, but having eligibility under MISAA represents a 13% increase over the current BEOG eligible population.

While I am unable to provide fully reliable data on the aggregate figures that these statistics translate into for the state of Vermont, I can offer some projections based on the assumption that these changes for students at my institution may be taken as typical of those for the whole self-supporting student population in Vermont and on the following additional data:

--The National Association of Student Financial Aid Administrators has provided me an estimate that there are currently 6,728 students receiving a total of $5.6 million in BEOG awards in Vermont.
--The Vermont Student Assistance corporation (VSAC) estimates that approximately 28% of these BEOG recipients are self-supporting by BEOG criteria.

My projections are, thus, as follows:

--The current BEOG eligible independent students would have received an estimated $472,884 additional funding if the MISAA formulas were applied to the 1978-79 year (28% of 6,728=1884 X $251).
--Students currently ineligible, but with BEOG eligibility under MISAA would have received an estimated $277,585 (13% increase in recipients over 1884 = 245 X $1133)

for a total increase in BEOG funding to Vermont (based on the current payment schedules and a maximum grant of $1600) of an estimated $750,469.

This would represent a 13% increase in BEOG funding to students in Vermont during the current year, in which Vermont is receiving less than 1% of the BEOG funding nationally and is ranked 49th (ahead only of Wyoming) in the receipt of BEOG funds. (Whereas Vermont ranks 45th in undergraduate enrollment and 41st in undergraduate degrees conferred, according to the most recent data available from the National Center for Education Statistics).

Thus, an additional three-quarters of a million dollars in student financial assistance for Vermont, particularly if it flows to the more nontraditional low-income students, would have a significant impact, and would allow state grant funds to go farther toward meeting all Vermont students' needs. I am certain, based on my personal knowledge of the students represented by the individual cases I have offered, that the low-income, nontraditional, self-supporting Vermonters who are currently being discriminated against by the BEOG independent model deserve the additional funding to which the Middle Income Student Assistance Act seemed to entitle them to improve their access to post-secondary education.

I am, therefore, urgently requesting your assistance in clarifying the intent of Congress in this matter and, if HEW's rumored interpretation does not follow Congressional intent, your action in whatever form is appropriate--including the appropriation of an additional BEOG authorization--to insure that the promised benefits of MISAA are indeed carried out by the Administration for the FY 1979 period.

I thank you for your consideration and your assistance on behalf of those whom we both are trying to assist.

Sincerely,

Marcia Vance

Marcia Vance
Director of Financial Aid

MV/cp
Enclosure

CALCULATION OF ELIGIBILITY INDEX FOR INDEPENDENT STUDENTS, 1978-79 AWARD PERIOD
SUMMARY OF CALCULATIONS

1.	Adjusted gross income of applicant (and spouse) in 1977.		2392 1
	a. Amount earned by applicant.	2392	
	b. Amount earned by spouse.	—	
2.	Total non-taxable income in 1977.		+ 1196 2
3.	One-half of Veterans Educational Benefits (to be received between July 1, 1978 and June 30, 1979).		+ — 3
4.	Annual adjusted income (lines 1+2+3).		= 3588 4
5.	Federal Income Tax Paid for 1977.		- 0 5
6.	Effective family income.		= 3588 6
7.	Family size offset (Table 1).	+ 1100 7	
8.	Unusual Expenses.	+ 0 8	
9.	Employment expense offset (Table 3).	+ 0 9	
10.	Unreimbursed elementary, junior and senior high school tuition and fees.	+ 0 10	
11.	Total offsets against income (lines 7+8+9+10).		1100 11
12.	Discretionary income (line 6 minus line 11).		= 2488 12
13.	If line 12 is a positive amount, multiply discretionary income by applicable rate to obtain standard contribution from income. If line 12 is a negative amount enter 0 (Table 4).		1866 13
14.	Determine net assets of applicant (and spouse).		0 14
15.	Multiply amount of assets of applicant (and spouse), entered in line 14 by 0.33 to obtain standard contribution from assets.		0 15
16.	If line 12 is a negative number, enter as a positive number; otherwise enter 0.		0 16
17.	Subtract line 16 from line 15 to obtain standard contribution from student assets. If negative number, enter 0.		0 17
18.	Add lines 13 and 17 to obtain standard contribution from income and assets.		1866 18
19.	Multiply standard contribution by multiple student rate to determine expected family contribution from each member in postsecondary education (Table 2).		— 19
20.	Student Eligibility Index equals line 19.		1866 20

CALCULATION OF ELIGIBILITY INDEX FOR INDEPENDENT STUDENTS, 1978-79 AWARD PERIOD
SUMMARY OF CALCULATIONS

1. Adjusted gross income of applicant (and spouse) in 1977.		9841 1
a. Amount earned by applicant.	984	
b. Amount earned by spouse.	—	
2. Total non-taxable income in 1977.		+ 3348 2
3. One-half of Veterans Educational Benefits (to be received between July 1, 1978 and June 30, 1979).		+ — 3
4. Annual adjusted income (lines 1+2+3).		= 4332 4
5. Federal Income Tax Paid for 1977.		- 0 5
6. Effective family income.		= 4332 6
7. Family size offset (Table 1).	+ 49507	
8. Unusual Expenses.	+ 0 8	
9. Employment expense offset (Table 3).	+ 4929	
10. Unreimbursed elementary, junior and senior high school tuition and fees.	+ 0 10	
11. Total offsets against income (lines 7+8+9+10).		54421 11
12. Discretionary income (line 6 minus line 11).		= -1110 12
13. If line 12 is a positive amount, multiply discretionary income by applicable rate to obtain standard contribution from income. If line 12 is a negative amount enter 0 (Table 4).		0 13
14. Determine net assets of applicant (and spouse).		9000 14
15. Multiply amount of assets of applicant (and spouse), entered in line 14 by 0.33 to obtain standard contribution from assets.		2970 15
16. If line 12 is a negative number, enter as a positive number; otherwise enter 0.		1110 16
17. Subtract line 16 from line 15 to obtain standard contribution from student assets. If negative number, enter 0.		1860 17
18. Add lines 13 and 17 to obtain standard contribution from income and assets.		1860 18
19. Multiply standard contribution by multiple student rate to determine expected family contribution from each member in postsecondary education (Table 2).		— 19
20. Student Eligibility Index equals line 19.		1860 20

CALCULATION OF ELIGIBILITY INDEX FOR INDEPENDENT STUDENTS, 1978-79 AWARD PERIOD
SUMMARY OF CALCULATIONS

1.	Adjusted gross income of applicant (and spouse) in 1977.		5486 1
	a. Amount earned by applicant.	3953	
	b. Amount earned by spouse.	1533	
2.	Total non-taxable income in 1977.		+ 0 2
3.	One-half of Veterans Educational Benefits (to be received between July 1, 1978 and June 30, 1979).		+ 0 3
4.	Annual adjusted income (lines 1+2+3).		= 5486 4
5.	Federal Income Tax Paid for 1977.		- 0 5
6.	Effective family income.		= 5486 6
7.	Family size offset (Table 1).	+ 6300 7	
8.	Unusual Expenses.	+ 0 8	
9.	Employment expense offset (Table 3).	+ 767 9	
10.	Unreimbursed elementary, junior and senior high school tuition and fees.	+ 500 10	
11.	Total offsets against income (lines 7+8+9+10).		7567 11
12.	Discretionary income (line 6 minus line 11).		= -2081 12
13.	If line 12 is a positive amount, multiply discretionary income by applicable rate to obtain standard contribution from income. If line 12 is a negative amount enter 0 (Table 4).		0 13
14.	Determine net assets of applicant (and spouse).		11,500 14
15.	Multiply amount of assets of applicant (and spouse), entered in line 14 by 0.33 to obtain standard contribution from assets.		3795 15
16.	If line 12 is a negative number, enter as a positive number; otherwise enter 0.		2081 16
17.	Subtract line 16 from line 15 to obtain standard contribution from student assets. If negative number, enter 0.		1714 17
18.	Add lines 13 and 17 to obtain standard contribution from income and assets.		1714 18
19.	Multiply standard contribution by multiple student rate to determine expected family contribution from each member in postsecondary education (Table 2).		— 19
20.	Student Eligibility Index equals line 19.		1714 20

CALCULATION OF ELIGIBILITY INDEX FOR INDEPENDENT STUDENTS, 1978-79 AWARD PERIOD
SUMMARY OF CALCULATIONS

1. Adjusted gross income of applicant (and spouse) in 1977.		1500 1
a. Amount earned by applicant.	1500	
b. Amount earned by spouse.	—	
2. Total non-taxable income in 1977.		+ 0 2
3. One-half of Veterans Educational Benefits (to be received between July 1, 1978 and June 30, 1979).		+ 1866 3
4. Annual adjusted income (lines 1+2+3).		= 3366 4
5. Federal Income Tax Paid for 1977.		- 0 5
6. Effective family income.		= 3366 6
7. Family size offset (Table 1).	+ 1100 7	
8. Unusual Expenses.	+ 0 8	
9. Employment expense offset (Table 3).	+ 0 9	
10. Unreimbursed elementary, junior and senior high school tuition and fees.	+ 0 10	
11. Total offsets against income (lines 7+8+9+10).		1100 11
12. Discretionary income (line 6 minus line 11).		= 2266 12
13. If line 12 is a positive amount, multiply discretionary income by applicable rate to obtain standard contribution from income. If line 12 is a negative amount enter 0 (Table 4).		1700 13
14. Determine net assets of applicant (and spouse).		0 14
15. Multiply amount of assets of applicant (and spouse), entered in line 14 by 0.33 to obtain standard contribution from assets.		0 15
16. If line 12 is a negative number, enter as a positive number; otherwise enter 0.		0 16
17. Subtract line 16 from line 15 to obtain standard contribution from student assets. If negative number, enter 0.		0 17
18. Add lines 13 and 17 to obtain standard contribution from income and assets.		1700 18
19. Multiply standard contribution by multiple student rate to determine expected family contribution from each member in postsecondary education (Table 2).		— 19
20. Student Eligibility Index equals line 19.		1700 20

REFERENCE TABLES FOR DETERMINATION OF STUDENT ELIGIBILITY INDEX

TABLE I

Family Size Offset

Family Size	Dollar Amounts	Family Size	Dollar Amounts
1	1,100	7	9,300
2	4,100	8	10,300
3	4,950	9	11,250
4	6,300	10	12,200
5	7,400	11	13,100
6	8,400	12	14,050
		$950 for each additional family member over 12	

TABLE 2

Multiple Student Calculation Rate

Number in Postsecondary Education	Calculation Rate
1	100%
2	70%
3	50%
4 or more	40%

TABLE 3

Employment Expense Offset

Dependent Student		Independent Student	
Both Parents Employed	Single Head of Household	Student & Spouse Employed	Single Head of Household
50% of Lesser Income, not to Exceed $1,500	50% of Income, Not to Exceed $1,500	50% of Lesser Income, Not to Exceed $1,500	50% of Income, Not to Exceed $1,500

TABLE 4

For Independent Students

Rates to Determine Contribution from Income	
Type of Family	Rate
Single Student	75%
Married with spouse only	50%
With dependents other than spouse	40%

NASFAA Newsletter January 15, 1979

HEW WILL NOT FUND INDEPENDENT STUDENT CHANGES IN FY-79

HEW has announced it will honor the language contained in the FY-79 Appropriations bill approved by Congress on October 14, 1978 and, therefore, will delay implementing the changes to the independent student model that were approved in the Family Contribution Schedules.

Under the Basic Grant Family Contribution Schedules published August 14, 1978 in the Federal Register and subsequently approved by both the House and Senate, the family size offset for the single independent student would have been increased to $3,400 for the 1979-80 award year, and assets of independent students with dependents would have been treated in the same manner as the family assets in the dependent model. However, the FY-79 Appropriations bill included a provision which retains the provisions relating to independent students which were in effect for the academic year 1978-79.

Initially, some HEW officials indicated that since the Appropriations bill actually was approved several hours before Congress adopted the Middle Income Student Assistance Act, the changes to the independent student model would be implemented based on the order in which the two measures were passed by Congress. However, others questioned this interpretation, and it was therefore referred to HEW's Office of General Counsel for resolution.

After several weeks of review, HEW indicated there is enough evidence to show that the Appropriations Act language takes precedence over authorizing language; therefore making it necessary to defer the independent student changes until FY-80. HEW also discussed this matter with the White House, and indications are that officials there concur with the decision and will not seek any change to allow implementation in 1979-80. It is estimated that the delay will save between $130 million and $150 million in Basic Grant expenditures in FY-79 (academic year 1979-80).

In spite of HEW's decision, the question still remains as to whether this is what Congress intended. A final answer on this point will not be known until the 96th Congress convenes and begins work later this week.

In the meantime, officials in the Bureau of Student Financial Assistance have revised the 1979-80 Family Contribution Schedules and they are awaiting final clearance in the Commissioner's office.

Mr. JEFFORDS. I do not really have any questions because I agree with so much of what has been said. However, I would be interested in your comments as to what would be the possible effects of disapproving the proposed family contribution schedule, on delaying BOEG awards under the program?

Would it be a serious problem if it was done expetitiously or not?

Dr. MARTIN. Let me try to respond to that, Mr. Jeffords.

Our association, the financial aid administrators, are the ones who are probably most immediately affected by that in terms of the implementation.

Currently, on the student eligibility reports that are being produced for the coming year by the Office of Education, there is a figure that shows the calculation that is reflected in this family contribution schedule but some one had the foresight within the Bureau to also go ahead and print an alternate calculation.

The alternate calculation is the correct eligibility index if in fact the law was followed. I can only assume that there was at least one honest person in the Bureau who understood this and assumed that this decision might be overturned and had the foresight to at least consider that as an alternative for the future.

Consequently, we are instructing our institutions as they go ahead now and begin to send award letters out, obviously to play conservative and go use the lower figure in announcing the awards to the students in the event this resolution of disapproval is not enacted.

On the other hand, we do have the other data. Schools are already prepared that as soon as we can get this resolution approved and get a change out of HEW, we could immediately switch it over, make the changes and as we begin to disburse funds for students, we could automatically increase that without any additional calculations.

There are some mechanical things that we have to adjust but it is not a major disruption. You should also be aware that under the law, there would be no disbursements made to students until July 1, therefore we do have some time before any dollars are disbursed.

The critical thing here is really one of giving students and institutions the lead time that is necessary so people can do good planning for next year.

As the chairman has pointed out, independent students are the people who many times are not just responsible for their own decisions but also have other dependents so it is very important for them to have some assurance that these dollars are going to be there.

We are interested in resolving this issue, and the more timely it can be, the better. However, we are prepared to wait if necessary to ensure its resolution.

Mr. JEFFORDS. That is very encouraging. Knowing the great political ability and dexterity of the chairman of this committee, I would not be surprised if he somehow infiltrated the bureaucracy and got that accomplished.

Does anyone else have any comments on that? I think your answer is very encouraging and I appreciate it.

Mr. PACKER. I think that says it all.

Mr. ROSCHWALB. Just one note, Mr. Jeffords. We all seem to take the opportunity of dumping on HEW and USOE, and usually appropriately. In this instance, the material read into the record by Mr. Packer regarding OE's own determination on the status of independent students, and the foresight in handling this matter as Dallas Martin has just explained, and the fact that the Secretary himself has not picked up what his General Counsel's Office attempted to do earlier in the game and through some legal interpretation tried to make impossible things possible, all this suggests to us the problem does not lie with HEW.

I believe that agency wants to carry out the law. It lies somewhere in those caves of OMB where decisions are made by people we do not know.

Mr. JEFFORDS. I think in fairness to the Secretary that is correct. I certainly know from our own discussions with him that he feels the way we do and has been hamstrung by OMB. I think he is sincere in his own belief in this area.

Thank you.

Mr. FORD. Mr. Murphy?

Mr. MURPHY. I am sorry I was late. I have read the testimony with interest and fully concur with what has been said.

Are we going to vote?

Mr. FORD. As soon as we get a quorum. Mr. Tauke?

Mr. TAUKE. I concur with the remarks made by my colleagues and also with the testimony you have presented this morning.

I must suggest that this panel is more colorful than some we have witnessed in the past several weeks.

Moving beyond what we are taking up today, there is a matter of concern to me relating to this whole area of legislation. A few weeks ago, the Carnegie Council on Policy Studies in Higher Education presented its proposals for reauthorization to this committee.

The Council stated:

> The probability of abuse may increase as a result of one of the changes brought about by the Middle Income Student Assistance Act of 1978. The temptation to seek independent status in order to avoid the parental contribution would be very great.

Do you have any reason to believe the number of students who are now of age 17 to 22, in the traditional age category, who would claim their independence is going to increase over the next few years?

Mr. PACKER. I really do not think so. Since the inception of the program, there has been a lot of concern over this whole question of how easy it is to become independent and how much money you get.

Let me give you a quick bit of history. About 2 years ago, HEW proposed to make it more difficult for students to become financially independent by requiring that rather than a student not being claimed as a tax exemption for 1 year previous to when they would be in school, they would have to be not claimed for 2 years previous, therefore obviously delaying for many people their ability to declare themselves financially independent.

That recommendation was generally rejected by the higher education community, and the administration in doing a careful review of this issue decided the extension to 2 years was not

appropriate and rather than perhaps prevent abuse would result in legitimate people who have no resources and are independent of their families being denied funds they should be able to get.

The data has shown consistently that the overwhelming percentage of even the single independent students are over 22 years of age and only a very small percentage of the so-called traditional 18 to 22 year age group is independent. I believe the figure for that group is only about 5 percent or so. I do not have the exact figure with me but we can provide it.

I really do not believe it is going to create a much greater stampede of students to become financially independent.

We are very upset with some of the recommendations of the Carnegie Council which in fact even talk about backtracking and perhaps even rejecting some of the changes that MISAA made. We really do not think that is the best move. We think they need to make further improvements in the treatment of independent students, particularly in the way income is treated for those independent students with their own dependents which right now is assessed at a rate of between 40 and 50 percent of their income which is then expected to be contributed to their education.

We think for those students who have their own dependents and are supporting a family, that is a rather harsh and restrictive and inequitable expectation.

Mr. TAUKE. I concur with your statements about independent students. It is important that we be very much aware of their plight and offer whatever assistance we can. Probably, additional assistance is necessary.

However, if we are to achieve our goal, we have to make certain that there are not abuses in the program.

Do you think it is fair to say that, first of all, persons in the 17 to 22 age group, are going to be able to receive more benefits if they declare their independence and, secondly, they can do so relatively easily, and there are few barriers to doing so?

Are those two statements accurate?

Dr. MARTIN. Mr. Tauke, let me attempt to respond to that. I basically agree with the points Mr. Packer has made to you.

There is no doubt that there are anecdotal cases where some families are not assuming their correct responsibility and have tried to subvert regulations and rules in such a way that they think they are getting something for nothing and maybe a little more than they deserve.

This is actually where the financial aid administrators come in. One of the reasons we look at that carefully in our applications within the school is trying to resolve some of these and some of these people are caught as a result.

Quite frankly the Bureau of Student Assistance has increased some of the edits in their program in the processing which has also caught some of these other people.

The evidence shows that the majority and I mean the vast majority of the basic grant independent student filers are not only at 22 as Mr. Packer says. Two years ago when we did an analysis (the data has changed more dramatically now) approximately 70 percent of the independent student applicants were over 26 years of age, well beyond any period of time we are talking about with the

18 to 22 year old where someone is trying to get out of their family responsibilities.

There is another factor even with some of those people who are in that 18 to 22 year old group that does not show up in the statistics that HEW puts out and causes some confusion.

In some cases, the applicants are from families where it is anticipated that once a student is beyond high school age they are independent and on their own.

In some cases, students who have applied as independents theoretically by Federal criteria do not really meet the definition because they have been claimed in prior years as a tax exemption. But even in those cases, if they had applied correctly as a dependent student, they would have still been eligible for full assistance because they are coming from low income disadvantaged backgrounds where the factor of pride exists.

That is the reason why we try to refer these students as self supporting as opposed to independent. Unfortunately the law talks about independent but that also implies some other kind of sociological factors for those students.

I would disagree with the Carnegie commission's report. I am aware and concerned about the same issue they are and likewise so are my colleagues but we really find that the demographics of postsecondary education are changing.

I might add one brief point and that is the concern over what you are concerned about and is very great at the institutions for historical reasons as well. The former ranking minority member of this subcommittee, now Governor of Minnesota, once discovered a young man on Federal support riding around in a red Corvette. I think it was the University of Minnesota. That became a life motif which we have to deal with and it lasted so long that the fellow is probably on social security by now.

The point is what has been made. It really depends on mind set and where you come from and regrettably despite the quality of the people serving on the Carnegie group that issued that report, you will find throughout the report, references to the necessity for making access to education available to every youth.

Those words run right through the report. The independent student, the part-time student, simply is not recognized. There is no desire to hurt. It is simply a report based to a great degree on the notion of the so-called traditional student, 18- to 20-year old, living at home until he goes off to a residential college.

The lack of grasping where we are today, happily today, in a much more democratic higher education constituency, is lying behind some of that.

I concur with my colleagues that while we have to be acutely alert to make sure there are no abuses of this, the probabilities of abuse given the statistics we now have and where they are attending suggests that is not the problem.

Mr. TAUKE. Thank you very much. Thank you, Mr. Chairman.

Mr. FORD. I would like to ask, is it not correct that a substantial number of the people we are talking about would be Vietnam veterans who did not return to college early and have acquired families and responsibilities and are now trying to go back to school?

Dr. MARTIN. That is correct, Mr. Chairman. It is not only Vietnam veterans. A lot of older Americans for whatever reasons, males as well as females, that have been displaced or suddenly find their job skills need to be upgraded or changed now, are going back and getting more education.

Mr. FORD. I think it might be helpful to read from the rules and regulations the definition of "independent students." I agree with Dr. Martin that it is unfortunate that we started using that term and I think at the time we started using it we were operating from a perspective like that described by Mr. Roschwalb of the Carnegie commission.

"(a) A student who for the calendar year of the award period for which aid is requested or the calendar year before the first calendar year of that award period:

"(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s) for any one of these years.

"(2) Has not received and will not receive financial assistance of more than $750 from his or her parent(s) in any one of these years.

"(3) Has not lived and will not live for more than 6 weeks in the home of his or her parent(s) in any one of these years."

The Commissioner considers that a student will not have been claimed as an exemption by a parent, will not have received more than $750 from a parent and will not have lived in the parent's home for more than 6 weeks if that parent dies before the student submitted his or her grant application. I thought it was generous that we would consider the student an orphan and not a dependent of his deceased parent.

You must meet all of those conditions to be an independent student. I am sure even this language still zeros in on how to tighten up the provisions to guard against someone simply saying if you move out of the house for a while you can take advantage of the grants.

Mr. Roschwalb made mention of the Carnegie commission's probable assumption that they were talking about youths, teenage students living at home and going off to a residential college. I have a very close relationship with Wayne State University in Detroit where upwards of 95 percent of that student population are commuters and where the average age of a student in the entire university is now approximately 28 years of age.

They have what is called a college of life long learning made up almost entirely of factory workers who attend school on a full time basis on Saturdays and Sundays. These are the kind of people that I, as the chairman of this committee, at least in recent years have had in mind when talking about the independent student.

As Mr. Martin has indicated, once you use the term "independent student," it conjures up different kinds of visions in different minds, depending on their own backgrounds.

We find as we did in the last Congress in tangling with the Veterans' Administration that even here in Washington where people should know better, there is still a substantial number of us, particularly in my age group, who think the demography of education froze at the time we went to college and that college campuses are like the nice tree-lined institutions that we attended with sort

of regular hours and attendance taking and living in dormitories and doing all of those things. That is just not where people are today and has not been for some time.

Fortunately in light of the concern that many of our fine institutions have for their ability to continue with the decreasing number of the post-war baby boom age group coming toward the college campus, the institutions have been responding to the prodding of this and other committees in the last decade in attempting to provide for a broader constituency than had traditionally been the case.

There are still many schools that are only interested in the so-called traditional student with $8,000 in tuition in their pocket.

The overwhelming majority of people who are served by the Federal programs are not attending those schools.

Mr. RATCHFORD. Mr. Chairman, I will not prolong the dialog because in Connecticut we have a legislative maxim of long standing that when you have the votes, vote. I sense overwhelmingly, if not unanimously, you have the votes.

I simply would observe by way of benediction that I once heard Hubert Humphrey defining the Office of Management and Budget as being that place that vacuums all humanity out of social programs.

I sense that maxim is still a true one regrettably and I am prepared to take the action you recommend.

Mr. FORD. Thank you. There are times when you are pleased about continuity in Government and times when you are not. I must observe it does not seem to make any difference at all which party or which personality occupies the White House, OMB just keeps right on going like Old Man River and nothing changes.

You can stand in the river and you will divert the flow of the water as it goes around your legs but as soon as it passes you, it comes right back together as if nothing ever happened.

It is unfortunately one of the places where the greatest degree of continuity exists, mainly because they deal in policies that were established by someone at some time in the past that no one can remember any longer.

I would ask unanimous consent to place in the record at this point the House Concurrent Resolution 84 which we have been discussing, H.R. 10854 from the last Congress which was the administration's education bill; basic educational opportunity grant program family contribution schedules from the March 23, 1979 Federal Register; basic educational opportunity grant program proposed family contribution schedules from the August 14, 1978 Federal Register.

Without objection, they will be entered in the record.

[The documents follow:]

96TH CONGRESS
1ST SESSION

H. CON. RES. 84

Disapproving certain regulations submitted to the Congress on March 16, 1979, with respect to the basic educational opportunity grant program.

IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 1979

Mr. FORD of Michigan submitted the following concurrent resolution; which was referred to the Committee on Education and Labor

---

CONCURRENT RESOLUTION

Disapproving certain regulations submitted to the Congress on March 16, 1979, with respect to the basic educational opportunity grant program.

Whereas the Secretary of Health, Education, and Welfare on March 16, 1979, submitted to the President of the Senate and the Speaker of the House of Representatives certain regulations amending the family contribution schedules for use during the 1979–1980 award period under the basic educational opportunity grant program of subpart 1 of part A of title IV of the Higher Education Act of 1965, pursuant to the Secretary's duty under section 431 of the General Education Provisions Act, and

Whereas the Congress, in the exercise of its authority under article I of the Constitution and in accordance with the procedure established by that section of the General Education Provisions Act for the safeguarding of that authority, has reviewed such regulations and finds certain of them inconsistent with the Act from which they must derive their authority as follows: Such regulations do not implement changes made by section 2 of the Middle Income Student Assistance Act with respect to the making of such grants to independent students for the school year 1979–1980, as required by section 9 of such Act: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That those regulations, submitted to the Congress on March 16, 1979, proposing to amend subparts C and D of part 190 of title 45 of the Code of Federal Regulations with respect to the family contribution schedules for use during the 1979–1980 award period under the basic educational opportunity grant program of subpart 1 of part A of title IV of the Higher Education Act of 1965, are disapproved by the Congress on the grounds of their inconsistency with the Act from which they derive their authority, as set forth in the preamble of this resolution, and are returned to the Secretary of Health, Education, and Welfare to be modified or otherwise disposed of as provided in section 431(e) of the General Education Provisions Act.

95TH CONGRESS
2D SESSION

H. R. 10854

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1978

Mr. FORD of Michigan (for himself, Mr. PERKINS, Mr. THOMPSON, Mr. BRADEMAS, Mr. QUIE, Mr. BUCHANAN, Mr. HAWKINS, Mr. PHILLIP BURTON, Mr. CLAY, Mr. BIAGGI, Mr. ANDREWS of North Carolina, Mr. BLOUIN, Mr. SIMON, Mr. ZEFERETTI, Mr. MILLER of California, Mr. MOTTL, Mr. MURPHY of Pennsylvania, Mr. HEFTEL, Mr. CORRADA, Mr. KILDEE, Mr. GOODLING, Mr. BRODHEAD, Mr. OBEY, Mr. TRAXLER, and Mr. BLANCHARD) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Higher Education Act of 1965 to increase the eligibility of middle-income students for the various forms of student assistance available under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Middle Income Student Assistance Act of 1978".

SEC. 2. (a) Section 411 (a) (2) (A) (i) of the Higher Education Act of 1965 is amended by inserting before the period at the end thereof the following: ", except that the

amount of such grant shall not be less than $250 for any student whose annual adjusted family income (determined in accordance with regulations prescribed by the Commissioner) does not exceed $25,000".

(b) Section 411(a)(2)(B)(ii) of that Act is amended to read as follows:

"(ii) No basic grant under this subpart shall exceed whichever is the greater of—

"(I) the difference between the expected family contribution for a student and the actual cost of attendance at the institution at which that student is in attendance, or

"(II) $250.

If with respect to any student, it is determined that the amount of a basic grant plus the amount of the expected family contribution for that student exceeds the actual cost of attendance for that year, the amount of the basic grant shall be reduced until the combination of expected family contribution and the amount of the basic grant does not exceed the actual cost of attendance, except that any reduction required by this paragraph shall not reduce the amount of any basic grant to less than $250: *Provided*, That, in the case of a single independent student with no dependents, no basic grant under this subpart shall exceed the difference between the expected family contribution for a student

and the actual cost of attendance at the institution at which that student is in attendance. If with respect to such single independent student, it is determined that the amount of a basic grant plus the amount of the expected family contribution for that student exceeds the actual cost of attendance for that year, the amount of the basic grant shall be reduced until the combination of expected family contribution and the amount of the basic grant does not exceed the actual cost of attendance at such instittution.".

(c) Section 411(a)(2)(B) of that Act is amended by striking out subdivision (iii) and by redesignating subdivision (iv) as subdivision (iii).

(d) Section 411(a)(3)(C) of that Act is amended by adding at the end thereof the following:

"In addition, such regulations shall—

"(i) provide that the portion of assets which shall be exempt from assessment for contribution for an independent student who has one or more dependents shall be the same as the portion so exempt for the family of a dependent student;

"(ii) provide that the rate of assessment for contribution on that portion of assets of such an independent student which is not exempt under subdivision (i) shall be the same as the rate applied to the comparable portion of assets of the family of a dependent student; and

"(iii) in establishing a portion of effective family income which shall be exempt from assessment for contribution by reason of subsistence requirements of independent students who have no dependents, use the same method for computation of such portion for such students as is used for dependent students and for independent students who have dependents.".

(e) Section 411(b)(5) of that Act is amended by striking out "$237,400,000" in subparagraph (B) and inserting in lieu thereof "$600,000,000".

(f) Section 411(b) of that Act is amended by adding at the end thereof the following:

"(e) No payments may be made on the basis of entitlements established under this subpart during the fiscal year ending September 30, 1980, in which—

"(A) the appropriation for making grants under subpart 2 of this part does not at least equal $450,000,000; and

"(B) the appropriation for work-study payments under section 441 of this title does not at least equal $600,000,000; and

"(C) the appropriation for capital contributions to student loan funds under part E of this title does not at least equal $286,000,000.".

(g) Section 415E of that Act is amended by striking

out "$75,000,000" and inserting in lieu thereof "$100,000,000".

SEC. 3. Title IV of the Higher Education Act of 1965 is further amended—

(1) in section 428(a)(2)(B) by striking out "$25,000" each place it appears and inserting in lieu thereof "$40,000".

(2)(A) in section 438(b)(2)(A)(ii) by striking out "3.5 per centum from such average" and inserting in lieu thereof "3 per centum from such average during any period of repayment or subtracting 3.5 per centum from such average during any other period";

(B) in section 438(b)(2) by adding at the end thereof the following new subparagraph:

"(D) For purposes of subparagraph (A), the term 'period of repayment' means any period during which any installment of principal has become due in accordance with section 427(a)(2)(B) or 428(b)(1)(E) and such installment is not eligible for deferral pursuant to section 427(a)(2)(C) or 428(b)(1)(M).";

(3) in section 438(b)(2)(B) by striking out "(i)"; and

(4) in section 438(b)(2)(C) by striking out the period at the end thereof and inserting in lieu thereof the following: "; or (ii) cause such allowance to be less

than 1 per centum for any such period, the special allowance rate to be paid for any such period shall be increased to the lowest one-eighth of 1 per centum rate which would not cause such difference.".

SEC. 4. (a) Section 1208 of the Higher Education Act of 1965 is amended by striking out ", part C of title VII," each place it appears in subsections (a) and (b).

(b) Section 1208(b) of such Act is amended by striking out "$215,000,000" and inserting in lieu thereof "$50,000,000".

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the U.S. Department of Agriculture has submitted a pesticide petition (PP 7E1974) to the EPA. This petition requests that the Administrator propose that 40 CFR 180.169 be amended by the establishment of a tolerance for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) including its hydrolysis product 1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate, in or on the raw agricultural commodity chestnuts at 1 part per million (ppm).

The toxicological data considered in support of the proposed tolerance included a 2-year rat feeding/oncogenicity study with a no-observable-effect level (NOEL) of 200 ppm; a 1-year dog subchronic feeding study with an NOEL of 400 ppm; a Rhesus monkey teratology study with an NOEL of 20 milligrams (mg)/kilogram (kg) of body weight (bw)/day, the highest level fed; an 18-month mouse oncogenicity study, negative at 400 ppm, the highest level fed; a three generation rat reproduction study with an NOEL of 200 mg/kg bw/day; and a dog teratology study with an NOEL of 3 mg/kg bw/day. The acceptable daily intake (ADI) in man is calculated to be 0.1 mg/kg bw/day based on a rat feeding study with a 100-fold safety factor, which results in a maximal permissible intake (PIM) for a 60 kg man of 6 mg/day. The theoretical maximal residue contribution (TMRC) for existing and proposed tolerances is 4.6 mg/day.

Carbaryl is a candiate for a rebuttable presumption against registration (RPAR), since it may exceed the risk criteria described in 40 CFR 162.11(a)(3)(ii)(B) for some registered uses. However, the amount of carbaryl added to the diet from the proposed use, calculated to be 0.00045 mg/day for a 1.5 kg daily diet, is too small to produce an increase of risk with respect to toxicological or pharmacological effects in man, the proposed tolerance will pose a negligible increment in risk.

No data is considered desirable but currently lacking to support the proposed tolerance. Tolerances have previously been established for carbaryl residues on a variety of raw agricultural commodities at levels ranging from 100 ppm to zero ppm, including an interim tolerance of 0.5 ppm in corn. The metabolism of carbaryl is adequately understood, and an adequate analytical method (colorimetry) is available for enforcement purposes. The use on chestnuts does not involve feed items and would not contribute to residues in eggs, meat, milk, or poultry.

The pesticide is considered useful for the purpose for which a tolerance is sought, and it is concluded that the tolerance of 1 ppm established by amending 40 CFR 180.169 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, on or before September 13, 1978, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number "PP7E1974/P78". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m., Monday through Friday.

(Statutory Authority: Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

It is proposed that part 180, subpart C, § 180.169 be amended by alphabetically inserting the tolerance of 1 ppm on chestnuts in the table to read as follows:

§ 180.169 Carbaryl; tolerance for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Chestnuts	1
* * * * *	

Dated: August 7, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-22507 Filed 8-11-78; 8:45 am]

[4110-02]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 190]

BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Family Contribution Schedules

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The family contribution schedules are the formulas used in determining student eligibility on the basis of financial need for the basic educational opportunity grant program. The legislation governing the program requires that these schedules be submitted annually for public comment and for review by both Houses of Congress. The amendments to the family contribution schedules for 1979-80 included in this notice of proposed rulemaking are intended to address concerns voiced by the public and the Congress regarding the asset reserve level, the assessment of discretionary income and the treatment of independent students.

DATES: Comments must be received on or before September 28, 1978.

ADDRESSES: Written comments should be sent to Mr. William Moran, Chief, Basic Grants Policy Section, Division of Policy and Program Development, ROB 3, Room 4923, 400 Maryland Avenue SW., Washington, D.C. 20202. Comments will be available for public inspection at the above address, between 8:30 a.m. and 4 p.m., Monday through Friday (except Federal holidays).

FOR FURTHER INFORMATION CONTACT:

William Moran, 202-245-1744.

SUPPLEMENTARY INFORMATION: These proposed amendments are being submitted for public comment. The final regulations resulting from this notice of proposed rulemaking will be in effect for the 1979-80 award period. Each of the proposed changes is listed and discussed here in the order in which it appears in the regulations.

1. *Adjustment of family size offsets.* The family size offsets included in the family contribution schedules are intended to provide for basic family expenses which must be met before any contribution toward a student's educational costs can be expected. In order to establish a standard for determining the amount of these expenses, the basic grant program adopted, during its initial year of operation, the "Weighted Average Thresholds at Low Income Level" published by the Bureau of the Census. These expenses

are based on the food costs of families of given sizes, and make certain assumptions about additional expenses of shelter and other family needs. these base-line data have been updated annually to accommodate the increases in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

In determining the expected family contribution for the basic grant program, applicants report actual financial data for a base year which is the calendar year prior to the academic year for which the grant is requested. Thus, data included in the 1979-80 application will reflect actual financial circumstances in calendar year 1978. To derive the family size offsets for the 1978 base year, those used for 1977 will be adjusted to correspond to the actual increase in the Consumer Price Index published by the Bureau of Labor Statistics at the end of the year. Since this notice of proposed rulemaking is published well before the conclusion of the year, the amounts in the 1979-80 family contribution schedule are estimated by increasing those used for 1978-79 by 6.1 percent. When the final regulation is published, these estimated amounts will be replaced by family size offsets based on the actual Consumer Price Index statistics for 1978 as published by the Department of Labor.

2. *Assessment rate for discretionary income.* The proposed regulations provide two alternatives for handling the assessment of discretionary income in the 1979-80 family contribution schedules. Discretionary income is defined as the income which remains after subtracting the family size offset, Federal income tax, unusual expenses, the employment expense offset, and the educational expense offset from the effective family income. Under the current regulations the first $5,000 of discretionary income of the parent of a dependent applicant is assessed at 20 percent, and if the discretionary income exceeds $5,000, the assessment is $1,600 plus 30 percent of the amount in excess of $5,000.

Alternative courses of action are proposed to accommodate the enactment of tax credit legislation by the 95th Congress. One of the two alternatives (termed alternative A in this discussion) would provide a reduction in the rate of assessment as a means of expanding the availability of basic grants to more students from middle-income families who previously have not been eligible for aid under the program. However, if a tax credit bill is enacted into law, it is expected that the benefits from that legislation would accrue largely to the families of students whom the proposed change in the assessment rate is intended to benefit. Thus, alternative A is proposed as a means of assisting these students if a tax credit proposal is not enacted into law. conversely, the other proposal (termed alternative B), intended to accommodate the enactment of tax credit legislation, would make no change in the current 20 percent/30 percent rates of assessing discretionary income.

Alternative A in the proposed regulation (§ 190.33(e)) would change the 20 percent/30 percent assessment rates to a rate of 12 percent for all of discretionary income. In addition to allowing low-income students to qualify for larger amounts of grant aid, this proposed 12 percent assessment rate would also enable students from middle-income families who formerly were not eligible for basic grants to qualify for aid under this program.

The following examples are given to illustrate the differences between the amount of basic grant aid awarded to students from various income levels under the proposed 12 percent assessment (alternative A) and the current assessment rate which would be continued under alternative B.

Assumptions. For purposes of illustration, in all of the following examples the applicant is a dependent student whose family has the following characteristics: A family of four, one parent working, one student in postsecondary education, no assets assessed, no unusual expenses, no tuition offset, no nontaxable income, no veteran's benefits, and a cost of education of at least $3,600.

To qualify for the maximum award of $1,800 the highest income the family may have is $6,700 under both the current method (alternative B) and the proposed 12 percent method of assessment (alternative A).

The maximum income the family could have in order to qualify for the minimum award of $200 would be $15,000 under alternative B and $23,450 under alternative A.

The following chart illustrates the difference in award amounts for families (using the same assumptions) with various income levels under the two methods of assessing the discretionary income.

Adjusted gross income	Alternative A[1]	Alternative B
$10,000	$1,457	$1,208
$17,500	733	0
$20,000	308	0
$23,000	0	0

[1]Amount of award at assessment rate of 12 pct.
[2]Amount of award at assessment rate of 20 pct for $1 to $4,999 and 30 pct for $5,000 plus.

3. *Raise asset reserve to $25,000.* This proposed regulation in § 190.35(a)(2)(i) raises the asset reserve for nonfarm or nonbusiness assets from $17,000 to $25,000. This larger figure is thought to be more reflective of actual asset holdings of the population. By increasing the asset reserve allowances to a level more in keeping with the various population groups, greater equity in the program can be achieved. The increase in the asset reserve allowance would also help to relieve the increased burden of middle-income Americans who have experienced most severely the influence of rapid inflation on their personal and other assets.

4. *Definition of the term "parent."* The program has always operated under the assumption that parents have the first responsibility for the education of their dependent children. In addition, it was felt that under certain conditions a student who was independent of his or her parents might, in fact, be dependent on some other person. In that case, we have in the past determined that the student was a dependent applicant and have requested "parental" income information from that other person.

However, through program experience, we have recognized a number of instances where our current definition of an "other parent" appeared to be quite unfair to both the applicant and the person (other than a parent) who had provided the applicant some support. Typical of this type of situation is the case where a relative or other concerned individual acts as a legal guardian of a student whose parents are deceased. This guardian will usually provide considerable subsistence support to the applicant, but does not have the obligation, or in many cases the capability, of providing for the applicant's postsecondary education. Thus, under our proposed change in the definition of the term parent, we would drop all reference to people in such a category and only consider the mother or the father of the applicant as a parent. It is not expected that this change will cause many previously dependent applicants to become independent since the vast majority of dependent applicants are dependent on their parents. This change would provide a more reasonable assessment of the financial need of the few applicants in this situation.

5. *Criteria for defining an independent student.* This notice of proposed rulemaking also includes a proposed revision in the definition of a self supporting or independent student. This proposed change in the definition is intended to supersede an earlier proposed change for the basic grant program and the three campus based programs (national direct student loans, college work study, and supplemental educational opportunity grants) published in the FEDERAL REGISTER as a notice of proposed rulemaking on July 12, 1977. For purposes of the basic

97

45-933 O - 79 - 7

grant program, the revised definition appears in § 190.42 of the proposed 1979-80 family contribution schedules. Thus, it is included in this notice of proposed rulemaking only for the basic grant program. However, when the family contribution schedules containing the revised definition are published as a final regulation, the revision will be published simultaneously as a final regulation for the three campus-based programs so that the definition will continue to be consistent among programs.

The current regulations define an independent student as one who, during both the year(s) for which aid is requested and the prior calendar year, has not been claimed by any person except his or her spouse as an exemption for Federal income tax purposes, has not received financial assistance of more than $600 from his or her parents, and has not lived for more than 2 consecutive weeks in his or her parents' home. The notice of proposed rulemaking of July 12, 1977, proposed two modifications in the definition:

(a) An extension of the Federal tax exemption criterion to apply for 2 calendar years prior to the year(s) for which aid is requested, rather than 1 calendar year, and

(b) An increase from 2 to 6 in the number of weeks an independent student may reside with his parents during the year(s) for which aid is requested and the prior calendar year.

This proposed change was published simultaneously with the notice of proposed rulemaking for the 1978-79 family contribution schedules. Originally it was intended that any changes made in the definition as a result of the notice of proposed rulemaking would be implemented for the 1978-79 academic year and would be published as a final regulation simultaneously with the publication of the final regulation for the 1978-79 family contribution schedules. However, the proposed revision in the definition generated a great deal of public comment expressing a wide range of opinions. There appeared to be a general feeling that more equitable treatment was needed for the independent student, both in the definition itself and in the basic grant need analysis formula. As a result of these expressions of concern from the commenters, as well as comments received during the congressional hearings on the 1978-79 family contribution schedules, we agreed to postpone the implementation of any changes in the definition until the 1979-80 award period. We also agreed to include the criteria for determining and supporting status among the items to be studied in a comprehensive review of the treatment of independent students. The revised definition cited as the notice of proposed rulemaking results from that review and is intended to supersede the proposed changes published in the NPRM of July 12, 1977. It keeps the time frame for all components of the definition as it exists in the current regulation (i.e., the year(s) for which aid is requested and the prior calendar year) rather than extending the income tax criterion back an additional year as the earlier NPRM had proposed. It repeats the change proposed in the earlier NPRM increasing the number of weeks an independent student may reside with his or her parents from 2 consecutive weeks to 6. Additionally, it increases the amount of support an independent student may receive from his or her parents from $600 to $750.

Raising the $600 figure to $750 to correspond to the current individual income tax exemption figure is considered a reasonable adjustment because of past inflationary trends. Likewise, extending the 2-week period of allowable residency with a parent to 6 weeks appears to be a more reasonable test of dependency in view of vacation visits and such.

6. *Family size offset—single independent student.* As mentioned earlier, the basic grant program has adopted the "Weighted Average Thresholds at the Low Income Level" as a reasonable approximation of subsistence expenses. Although the census data for 1972 indicated an average low income threshold of $2,168 for a single person, it was decided that a single independent applicant should only receive an offset against income which is sufficient to cover that student's summer living expenses. This decision was based on the assumption that a student's living expenses while attending school are incorporated in the student's cost of education budget on the basis of which his or her financial need is determined by the institution. It was further assumed that a student typically would not be in school for about 4 months or 35 percent of a calendar year. On this basis, the family size offset for a single independent student was set at $760 for the 1977-74 award period. Application of the annual Consumer Price Index increases to this base figure would result in an offset of $1,150 for the 1979-80 award period.

Since the inception of the program there has been considerable negative reaction to the level of the family size offset for the single independent student. To provide consistency of treatment for the single independent student, the Office of Education is proposing to allow the single independent student a family size offset comparable to those provided to the dependent student and the independent student with dependents. In this context, "single independent student" means an independent student with no dependents (i.e., with a family size of one.) Therefore, applying annual increases in the Consumer Price Index to $2,168, which was the average low income threshold for a single person in 1972, it is proposed that the family size offset for the single independent student be raised to $3,400 for the 1979-80 award period. This proposal would permit the single independent student to be eligible for the maximum award with an income of $3,450 and the minimum award with an income of $6,000. Under the current method of computation, the income levels for the maximum and minimum awards would be $1,150 and $3,300, respectively. All these income levels are provided under the assumption that no assets are involved.

7. *Asset treatment for independent students with dependents.* The family contribution schedule for the independent student is based on the assumption that the independent student, as the primary beneficiary of his postsecondary education, is expected to contribute a larger portion of income and resources toward his or her own education than would be expected from the family of a dependent student. In this context, the family contribution schedule presently requires that 33 percent of the reported assets be included in the computation of the independent student's expected family contribution.

While the concept of a more stringent treatment of the independent student's resources is generally accepted, the program has nevertheless been subjected to considerable criticism in the case of the independent student with dependents who reports assets on the application form. The bulk of these assets have consisted of equity in a home. (For purposes of this part, the term independent student with dependents refers to the independent student with a family size greater than one and includes a married independent student.)

As a general rule, such applicants report modest incomes, but by virtue of the heavy assessment of assets, consisting primarily of home equity, they are eliminated from eligibility. Since the independent student with dependents has essentially the same family responsibilities as the parents of a dependent student, it is proposed that we afford this type of student the same type of protection against assets as is given the family assets of the dependent student. That is, the independent student with dependents would receive an asset reserve of $25,000 and any remaining assets would be assessed at 5 percent to determine expected contribution from assets. In the case of the applicant with farm or business assets, the asset re-

serve would be raised to $50,000 for all assets, which would be consistent with the treatment of the assets of the parents of dependent students. The asset reserves would not be applicable to the assets of the single independent student and the assessment rate for the single independent student's assets would remain at 33 percent.

This combination of asset treatment would preserve the concept that the independent student should contribute a greater portion of his or her resources toward postsecondary education expenses. At the same time it recognizes that the independent student with dependents has family responsibilities which are identical to those of the parents of dependent students.

The effect of the proposal is demonstrated through the example of an independent student with dependents and the following characteristics: Family size of four, one parent employed, one family member attending a postsecondary institution and annual adjusted gross income of $10,000. If the family has no assets, the student would be entitled to an award of $657 using either the current or proposed method of asset treatment. However, the student would still be entitled to $657 under the proposed treatment with assets totaling up to $25,000. According to the present method in which assets are considered, the student would be ineligible with assets in excess of $1,400. The proposed procedure would therefore treat the resource position of the independent student with dependents in a much more realistic manner.

AUTHORITY: Pursuant to the authority contained in title IV of the Higher Education Act of 1965, as amended (Pub. L. 89-329), the Commissioner proposes to amend the regulations in 45 CFR Part 190.

(Catalog of Federal Domestic Assistance No. 13.339, Basic Educational Opportunity Grant Program.)

Dated: June 27, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: August 8, 1978.

JOSEPH A. CALIFANO, Jr.
Secretary of Health, Education, and Welfare.

Accordingly, 45 CFR Part 190 is proposed to be amended as set forth below.

1. In § 190.32, paragraph (n) is amended to read as follows:

§ 190.32 Special definitions.

* * * * *

(n) (1) For purposes of this subpart and subpart D, "parent" means the student's mother or father. (Adoptive parents are considered the student's mother and father.)

2. In § 190.32a subparagraphs (e) and (f) would be amended to read as follows:

§ 190.32a Annual adjusted family income.

* * * * *

(e) The following rule applies if a parent whose income is taken into account under paragraph (c) of this section has remarried. The income of that parent's spouse shall be included in determining the student's annual adjusted family income if the student:

(1) Has received or will receive financial assistance of more than $750 per year from that parent's spouse in the calendar year(s) in which aid is received or the calendar year before the award period for which aid is requested, or

(2) Has lived or will live for more than 6 weeks in the home of that parent's spouse during the calendar year(s) in which aid is received or the calendar year before the award period for which aid is requested.

(f) The following rule applies if a parent whose income is taken into account under paragraph (a) of this section was a widow or widower and that parent has remarried. The income of that parent's spouse shall be included in determining the student's annual adjusted family income if the student:

(1) Has received or will receive financial assistance of more than $750 per year from that parent's spouse in the calendar year(s) in which aid is received or the calendar year before the award period for which aid is requested, or

(2) Has lived or will live for more than 6 weeks in the home of that parent's spouse during the calendar year in which aid is received or the calendar year before the award period for which aid is requested.

3. In § 190.33 subparagraph (b)(1) and paragraph (c) would be amended to read as follows:

§ 190.33 The expected family contribution for dependent students from effective income.

* * * * *

(b) * * *

(1) Family size offset. A family size offset is the amount specified in the following table. Family members include the student, the student's parents and the student's parent's dependents. If the parents are divorced or separated, family members include the student and any parent whose income is taken into account for the purpose of computing the annual adjusted family income and that parent's dependents. If the parents are divorced and the parent whose income is taken into account for the purpose of computing the annual adjusted family income has remarried, or if the parent was a widow or widower who has remarried, family members shall also include any dependents of that spouse if the new spouse's income is taken into account in determining the annual adjusted family income.

Family size offsets

Family members:	Amount
2	$4,350
3	5,250
4	6,700
5	7,850
6	8,900
7	9,850
8	10,950
9	11,950
10	12,950
11	13,900
12	14,900
13	15,900

Plus $1000 for each additional family member over 13.

* * * * *

Alternative A: (c) The expected family contribution from parental income is 12 percent of discretionary income.

(20 U.S.C. 1070a(a)(3)(B).)

Alternative B: (c) To determine the expected family contribution from parental income the following rates shall be applied to discretionary income:

$0 (no contribution expected).
$1 to $4,999, 20 percent of Discretionary Income.
$5,000 or more, $1,000 plus 30 percent of Discretionary Income in excess of 5,000.

(20 U.S.C. 1070a(a)(3)(B).)

4. In § 190.35, subparagraph (a)(2) is amended to read as follows:

§ 190.35 Computation of standard expected contribution from parent's assets.

(a) * * *

* * * * *

(2)(i) If the net assets determined in paragraph (a)(1) of this section do not include farm or business assets, deduct an asset reserve of $25,000 from the net assets. (ii) If the net assets determined in paragraph (a)(1) of this section include farm assets or business assets, deduct an asset reserve of $50,000 from the net assets. However, in this case an asset reserve of not more than $25,000 may be deducted from non-farm and/or non-business assets owned by the parents.

* * * * *

5. Section 190.42 would be amended to read as follows:

§ 190.42 Special definitions.

For the purposes of this subpart:

(a)(1) A student shall qualify as an independent student if he or she:

(I) Has not and will not be claimed as an exemption for Federal income tax purposes by his or her parent for the calendar year(s) in which aid is received and the calendar year before the award period for which aid is requested.

(ii) Has not and will not receive financial assistance of more than $750 per year from his or her parent in the calendar year(s) in which aid is received and the calendar year before the award period for which aid is requested; and

(iii) Has not lived or will not live for more than 6 weeks in the home of his or her parents during the calendar year in which aid is received and the calendar year before the award period for which aid is requested.

* * * * *

6. Section 190.42a would be amended to read as follows:

§ 190.42a Annual adjusted family income.

(a) "Annual adjusted family income" for any base year includes, except as provided in paragraph (b) of this section—

(1) The sum received in the base year by the student and his or her spouse from:

(i) Adjusted gross income as defined by section 62 of the Internal Revenue Code, regardless of whether the student or his spouse filed an income tax return;

(ii) Investment income upon which no Federal income tax need be paid. An example of such income is the interest on State and municipal bonds; and

(iii) Other income upon which no Federal income tax need be paid. Examples of such income include child support payment, income from income maintenance programs such as welfare benefits and social security benefits.

(2) One-half of any amount to be paid to a student under chapters 34 and 35 of the United States Code (veteran's benefits) in the academic year for which aid is requested;

(b) For an Indian or other Native American student, the income received by the student or his spouse pursuant to an award made under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) need not be included in determining the annual adjusted family income.

(c) In the case of the student who is divorced or separated, only the student's own income shall be considered in determining the annual adjusted family income.

(d) In the case where the student and his spouse are married and not separated but file separate returns for Federal income tax purposes, the income as described in paragraph (a) of this section of both the applicant and spouse shall be combined to determine the annual adjusted family income for that student.

(20 U.S.C. 1070a(a)(3)(B).)

7. In § 190.43 subparagraph (b)(1) would be amended to read as follows:

190.43 The expected family contribution for independent students from annual adjusted family income.

* * * * *

(b) * * *

(1) Family size offset. A family size offset is the amount specified in the following table. Family members include the student and his dependents. If the student is divorced or separated, family size shall include any person whose income is taken into account for the purpose of computing the annual adjusted family income and his or her dependents.

Family size offsets

Family members:	Amount
1	$3,400
2	4,350
3	5,250
4	6,700
5	7,650
6	8,900
7	9,850
8	10,950
9	11,950
10	12,950
11	13,900
12	14,900
13	15,900

Plus $1,000 for each additional family member over 13.

8. § 190.45 would become § 190.44 and would be amended to read as follows:

§ 190.44 Computation of expected contribution from the assets of a single independent student with no dependents.

(a) Except as provided for in paragraph (b) of this section, the expected contribution from the assets of a single independent student with no dependents, (i.e., with a family size of one) shall be determined in the following manner:

(1) Determine the total amount of net assets owned by the student.

(2) The contribution from assets shall be an amount equal to 33 percent of the amount determined in subparagraph (1) of paragraph (a) of this section.

(b) (1) If the calculations required by § 190.43(b) produce an amount of negative discretionary income as defined in subparagraph (2) of this paragraph the expected contribution from the assets of the student calculated in paragraph (a) of this section shall be reduced by the amount of such negative discretionary income.

(2) The amount of negative discretionary income is the amount by which the sum of deductions for offsets and expenses set forth in § 190.43(b) exceeds the amount of income determined in § 190.43(a). (20 U.S.C. 1070a(a)(3)(B))

§ 190.45 Computation of standard expected contribution from assets of independent students with a family size greater than one.

(a) Except as provided for in paragraph (b) of this section, the expected contribution from assets of independent students with dependents shall be an amount determined in the following manner:

(1) Determine the net assets owned by the independent student and the student's spouse;

(2) If the net assets determined in paragraph (a)(1) of this section include farm or business assets as defined in § 190.32 (d) and (j), deduct an asset reserve of $50,000 from the net assets, except that an asset reserve of no more than $25,000 may be deducted from non-farm and/or non-business assets. If the net assets determined in paragraph (a)(1) of this section do not include farm or business assets, deduct an asset reserve of $25,000 from the net assets.

(3) The contribution from the assets of an independent student with a family size greater than one shall be an amount equal to 5 percent of the remainder obtained in subparagraph (2) of paragraph (a).

(b) (1) Where the calculations required by § 190.43(b) produce an amount of negative discretionary income as defined in subparagraph (2) of this paragraph, the expected contribution from assets of an independent student with dependents, calculated in subparagraph (3) of paragraph (a), shall be reduced by the amount of the negative discretionary income.

(2) The amount of negative discretionary income is the amount by which the sum of deductions for offsets and expenses set forth in § 190.43(b)(1) through § 190.43(b)(4) exceeds the amount of income determined in § 190.43(a). (20 U.S.C. 1070a(a)(3)(B))

* * * * *

[FR Doc. 78-22475 Filed 8-11-78; 8:45 am]

100

Mr. FORD. I want to thank the panel. The committee will stand in recess until 9:30 a.m. for testimony from the Office of Management and Budget and the Department of HEW.

[Whereupon, at 11:06 a.m., the subcommittee adjourned to reconvene the following day, Thursday, April 5, 1979, at 9:30 a.m.]

[The Chronicle of Higher Education, Mar. 26, 1979]

CARNEGIE COUNCIL'S RECOMMENDATIONS ON FEDERAL STUDENT-AID PROGRAMS

THE MOVEMENT TO PROVIDE AID TO STUDENTS FROM "MIDDLE-INCOME" FAMILIES SHOULD GO NO FURTHER

Following are the recommendations for federal student-aid programs of the Carnegie Council on Policy Studies in Higher Education:

(1) Students should normally be expected to contribute significantly from their own earnings toward college expenses, as a condition of eligibility for student aid. An earnings expectation should gradually be imposed in the Basic Grant program and by 1982-83 should amount to $600 for lower-division students and to $1,000 for upper-division students, and a modest additional contribution of $250 should be required in the S.S.I.G. [State Student Incentive Grant] program. A student should be permitted to meet the self-help expectation wholly or partially through borrowing as an alternative form of self-help.

(2) The annual appropriation for the College Work-Study (C.W.S.) program should gradually be increased to $900-million (in constant 1979 dollars) by 1982-83. Family-income eligibility conditions should gradually be removed from the program, but preference in awarding employment opportunities under the program should be given to student, especially women and minorities, who have difficulty in finding jobs in the private employment market.

(3) The self-help expectation should normally be applicable to independent as well as to dependent students, and the recently pronounced legislative increase in the "family size offset" for independent students without dependents should be reconsidered by Congress.

More objective criteria for determining independent status should be developed—criteria that would take into account the applicant's age, whether he or she has dependents, whether he or she is an orphan, and the number of years during which he or she has been self-supporting. The more difficult cases of applicants who do not meet such criteria should be handled by student-aid officers.

Independent students with dependents should be subject to the same parental contribution schedule as parents of dependent students (with adjustments to meet unusual circumstances), and should not ordinarily receive student aid for their dependents.

(4) Student assistance under the Basic Grant program should be designed to cover noninstructional costs of needy students.

(5) The maximum award in the Basic Grant program should be increased gradually to $2,400 by 1982-83. This would mean that the maximum grant in practice would normally be $1,800 for lower-division and $1,400 for upper-division students, after taking account of the self-help expectation.

(6) Congress should allocate, over and above the sum needed to meet normal expected costs of the Basic Grant program, an additional 10 per cent for discretionary use in the administration of the program at the campus level, including waiver or modification of the self-help expection for students whose employment opportunities are impaired by residence in inner-city or rural areas, disabilities, the need for a heavy course load, exceptional family circumstances, or college entrance at an unusually early age.

(7) The present limitation of a Basic Grant to 50 per cent of a student's total educational costs should be removed, since our recommendations for a self-help expectation in the Basic Grant program, together with our recommendations for substantial expansion of the S.S.I.G. program, remove the rationale for retention of the limitation.

(8) The movement to provide aid to students from "middle-income" families should go no further. Any additional changes in this direction would seriously erode the need-based character of student aid. In particular, we strongly oppose adoption of tuition tax credits for the families of college students as a regressive and self-defeating form of parental relief. The central purpose of student-aid programs should continue to be the encouragement of equality of opportunity

(9) A simplified C.S.S./A.C.T. [College Scholarship Service and American College Testing program] parental-contribution schedule should be adopted by the federal government to apply to federal student-grant programs and to federal matching of state funds under the State Student Incentive Grant program, after minor adjustments to preserve eligibility for Basic Grants for students from families in the $22,000 to $25,000 income range.

(10) Eligibility for Basic Grants and other types of federally assisted student aid should be limited to two years at a two-year college and four years at a four-year college (on a full-time equivalent basis) and to students making normal progress toward a degree.

(11) Total appropriations for the federal share of the S.S.I.G. program should be increased to $917-million by 1982–83, so that total federal-state funds for need-based undergraduate state scholarship programs would be large enough to provide tuition assistance to all needy undergraduates.

Federal provisions should also be amended to (1) provide matching funds for grants to meet tuition expenses in excess of $250, up to a maximum of $1,500—the $250 being a self-help expectation for the student—or a total tuition of $1,750; (2) increase the federal matching formula to 75 per cent of the cost of grants awarded to students attending institutions in other states (limited to states that reciprocate, if the state prefers); (3) provide for matching increases in state appropriations from 1969–70 on; and (4) limit federal matching to amounts of student aid indicated when the C.S.S./A.C.T. parental contribution schedule is used.

(12) The Supplementary Educational Opportunity Grant (S.E.O.G.) program should be continued at approximately its 1979–80 level of funding, but assistance under the program should be designed for students who have difficulty in meeting tuition costs because of unusual family circumstances, difficulty in meeting the self-help requirement, or other special problems.

(13) Congress should give careful consideration to phasing out the N.D.S.L. [National Direct Student Loan] and G.S.L. [Guaranteed Student Loan] programs and replacing them by a National Student Loan Bank (N.S.L.B.). The possibility of changes in the provisions governing the Student Loan Marketing Association (S.L.M.A.) to transform it into an institution resembling the proposed N.S.L.B. may well facilitate such a move.

(14) Student aid should be available for part-time students on a pro-rated basis, provided they are enrolled for a least half-time study. In exceptional cases, where, for example, employment opportunities are impaired, the individual is handicapped, or an enrolled parent is responsible for child care, aid should be granted to students enrolled for less than half time at the discretion of the student-aid officer, taking advantage of the Basic Grant override and S.E.O.G. funds.

Future development of student-aid policies for adult and part-time college students should be carefully considered in relation to the need to encourage a more general program of paid educational leave.

(15) Federal rules and regulations relating to student aid are in need of simplification, which could be accomplished by adopting our proposals, which call for more uniform and objective policies relating to most student-aid applicants, leaving decisions relating to the more complex and difficult cases to student-aid officers.

The Office of Education should also encourage adequate training and upgrading of student-aid officers.

(16) The U.S. Office of Education should develop policies and procedures that encourage equitable and consistent student-aid packages for all students, rather than treating each student-aid program as a separate entity.

(17) The Council recommends the elimination of Social Security benefits for college students aged 18 to 21 who are children of deceased, disabled, or retired workers.

(18) The Council recommends that college students no longer be eligible for food stamps.

HEARING ON HOUSE CONCURRENT RESOLUTION 84

THURSDAY, APRIL 5, 1979

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
SUBCOMMITTEE ON POSTSECONDARY EDUCATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m. in room 304, the Cannon Building, Hon. William D. Ford (chairman of the subcommittee) presiding.

Staff present: Thomas R. Wolanin, staff director; Patricia F. Rissler, deputy staff director; and William Clohan, minority assistant education counsel.

Mr. FORD. The subcommittee on postsecondary education will come to order this morning for the purpose of continuing on our hearing on House Concurrent Resolution 84, a resolution disapproving family contribution schedules governing awards under the basic education grant program for the 1979–80 academic year.

This is going to be a very brief hearing this morning because, I am very pleased to announce, the administration has taken a closer look at the law and at their budget priorities and have informed us of an agreement to submit a revised family contribution schedule.

The new family contribution schedule will include provisions to implement for the coming academic year the independent student changes enacted by the Middle Income Student Assistance Act.

I think it is important that we note the special credit that is due to our friends in the Department of Health, Education, and Welfare, the Office of Education in particular, and at the White House, who made the case in the Councils of the executive branch where the decisions are made for the implementation of the independent student changes this year, and made the case for the administration to meet what our friends in HEW and the Office of Education have consistently indicated in their recommendations to be a legal and moral commitment to the students involved.

I would also like to express my appreciation to the members of this subcommittee, and particularly to the ranking minority member who is being held up on his way here this morning, for very vigorously and effectively supporting our efforts to bring this matter to a head quickly.

This committee has been most anxious to move with dispatch and dispose of this question so that there would be no danger of delay that could in any way affect the implementation of these changes in the forthcoming academic year.

In addition I think it is important to pay tribute to the higher education community, particularly their representatives who have appeared before this committee, especially those who were here yesterday as advocates for this cause. What pleases me most about this decision is that I am informed that approximately 700,000 deserving independent students will receive either increased grants or, in the case of some 60,000 of them, receive grants where they would not have received any grant at all.

These self-supporting students will receive approximately $130 million more than they would have otherwise received to help them pursue their education in the forthcoming academic year.

It is difficult to grasp the enormity and the reality of numbers in the magnitude of 700,000 and $130 million but it is a pleasure to be able to relate specific action here in the Congress and the administration to a specific group of people with such a clear understanding of the immediate effects that this action will have.

Perhaps I can best express the significance of what has transpired by referring to the two examples that were used in yesterday's hearings, which will illustrate the situation of independent students.

The hypothetical woman with two children to support, $3,600 in child support, $3,000 in income from part time employment and $9,000 in assets, which could be a paper value in a home, for example, will now receive a maximum basic grant of $1,800 as opposed to nothing if the administration had not taken this action. She can now get the education that would presumably be sought by her for the purpose of increasing her earning capacity and the quality of life for her and for the children.

You will recall the reference by one of the witnesses yesterday that it might be observed that Mrs. Steel's son in Kalamazoo will no longer face the winter in that cold city with the choice that was indicated yesterday, of either paying a heating bill or paying for tuition.

Finally, I would like to express my own personal satisfaction as chairman of this committee that we have been able to provide a concrete and very important illustration of the fact that this Government is sensitive and responsive to the real needs of the citizens and that this Government keeps its word.

I have, before I call on the Commissioner, a letter just delivered to me a moment ago from Secretary Califano.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D. C. 20201

APR 5 1979

The Honorable William D. Ford
House of Representatives
Washington, D.C. 20515

Dear Bill:

Thank you for your letter regarding funding for the independent student provisions of the Basic Education Opportunity Grant (BEOG) program as provided for in the Middle Income Student Assistance Act. I am pleased to be able to announce that the Administration will support the implementation of these provisions in FY 1979.

As you know, we shared your concerns about equitable treatment of independent students. The Administration recommended and strongly supported these liberalizations. Our decision, at the time that the FY 1980 budget was submitted to the Congress, was to delay the implementation of liberalizations for independent students until FY 1980. This decision was based on the need for fiscal restraint with respect to FY 1980 outlays.

However, since the budget was submitted last January, additional savings for this year have been achieved in the Basic Grants program as the result of our efforts to reduce fraud and abuse. Consequently it will be possible to fund the independent student provisions without increasing the outlay or budget authority estimates contained in the President's Budget for fiscal years 1979 and 1980.

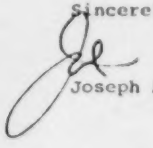
As you point out in your letter, amounts carried over from the FY 1978 BEOG appropriations could be made available to fund these provisions in FY 1979. Congressional action, however, will be required to waive the restriction that limits the carryover to 15% of the amount appropriated. It will also be necessary

to authorize use of these carryover funds for this purpose rather than to bring the level of awards to current BEOG recipients up to the full authorized level.

We will also have to change the language in the FY 1979 Appropriations Act which requires basic grant awards to be made consistent with the independent student provisions in effect prior to enactment of the Middle Income Student Assistance Act. Finally, the Family Contribution Schedule that we recently transmitted to the Congress for review will have to be revised to reflect implementation of the independent student provisions.

We believe these changes can be made promptly, and we will move as fast as we can to submit the necessary legislative proposals to the Congress at the earliest possible date.

Sincerely,



Joseph A. Califano, Jr.

Mr. PEYSER. Will the chairman yield at that point?

Mr. FORD. Yes.

Mr. PEYSER. The chairman was very kind in speaking of the subcommittee's efforts on his behalf but I think the record should plainly show that it was the chairman himself who was one of the prime forces in accomplishing this change through his own perseverance in this area. I think we certainly on the subcommittee will recognize that and we appreciate what you have done and I am sure the students involved around this country will also appreciate it.

Mr. BUCHANAN. Will the gentleman yield?

Mr. PEYSER. I would be glad to.

Mr. BUCHANAN. I would like to join my colleague in commending the chairman for his leadership in this matter. It will make a significant difference in the lives of thousands of people in this society and for those who will look for this help in the coming year.

I also want to say to our distinguished friend, the Commissioner, that you and Joe Califano really did not look right in those black hats. In the spirit of spring, and with the cherry trees in bloom, I am pleased to see you put your white hat back on where it belongs.

I am very gratified with the decision.

Mr. WEISS. Will the gentleman yield?

Mr. BUCHANAN. Yes.

Mr. WEISS. I would also like to add my word of appreciation to the chairman and to the Department and the Office of Education.

In the New York area, New York City itself, the City University alone has some 78,000 students who qualify for BEOG, 31,000 of those are independent students, 15,000 of those 31,000 are independent students with dependents of their own. This is the magnitude of the situation that we are talking about in the city and I am sure this is reflected across the country.

On their behalf I want to express my appreciation.

Mr. FORD. I thank you, gentlemen. We are all very happy to see the Secretary and the Commissioner come in out of the cold.

Mr. BUCHANAN. Mr. Chairman, in this administration, aren't wonderful and sudden conversions in order?

Mr. FORD. Well, Reverend, as a Baptist minister from Alabama I will defer to your expertise.

Mr. Commissioner, we are very pleased to have you, and Deputy Leo Kornfeld, this morning and especially since I know full well from our many conversations that you are as happy about this outcome as we are.

Rather than just simply discontinue the hearings as we are tempted, we wanted to end them on a more pleasant note than they began and we are grateful that you came over this morning to do that for us.

Mr. BOYER. Thank you, Mr. Chairman and members of the committee. I share in the satisfaction that you have expressed. There is no question that the inequity that was directed toward independent students by the federal student assistance program urgently needed correction.

Current practice fails to recognize the fundamental shifts in the kinds of students who go to college. Our definitions were based upon practices that have been modified dramatically. The data from City University of New York vividly illustrates that we have older people, many of them single-parent families, urgently needing to continue their education in order to be economically independent.

It seems to me that we have taken the right action to adjust our formulas for distribution. It was for that reason that this administration last year took the initiative to submit to you for consideration under our middle income proposal a change in formula that would be fair and equitable.

It was for that reason that this committee supported that enthusiastically and Congress affirmed it. It was for that reason that we share in the outcome of this discussion which has led to our ability to implement that immediately.

I repeat that in my view this is the correct position.

I can add, Mr. Chairman, that administratively we are well equipped to see that all students who already have applied for basic grants will be processed in a way so that their increased elgibility will be available to campuses, and we have had, in fact, for many weeks a double entry.

We, as Mr. Califano's letter indicated, had earlier before you a proposal to defer the implementation date. It is clear now that with the revisions that we have, estimating up to $700 million carryover, that the case for immediate implementation was significantly strengthened in our own internal discussions and thus the Secretary's letter to you.

I share absolutely in the, I guess we call it bottom line issue. We estimate with you that some 700,000 students will have increased income provided support and approximately 60,000 new students now will be made eligible by the lifting of these wholly inappropriate constraints.

Finally, on behalf of the Secretary and my office and the administration generally I would like to say how grateful we are to

Chairman Ford and to the members of this committee for the concern that you have expressed and your diligence in pursuing this as an important public policy issue that has led to this outcome.

In my view, and I concur in your own summary, it is democracy and government at its best where issues can be openly aired, a public comment can be persuasively stated and internal decision-making can be balanced by that open and fair encounter.

Quite candidly it was because of the clarity of your position on this and your persistent inquiry that we were able to discuss it honestly and fairly and the opinions i think were well meant on all sides but I think the outcome is a tribute to the processes that we all seek to make work in the Government that we have.

Again, I would express our pleasure that it has been possible for us to implement this urgently needed reform immediately and I thank this committee for the outstanding leadership that has made this possible, and I know that is shared by students, 800,000 plus all of the higher education community across the country and those of us in the administration that seek to serve those institutions and those students.

You also know, and I want to pay tribute to Mr. Kornfeld and his colleagues who have helped in the analysis and who must now go back home and implement it.

Mr. FORD. Thank you very much, Mr. Commissioner.

I think it should be noted again that your foresight and that of Mr. Kornfeld's in your department, including double entry bookkeeping for the past 2 months in preparation for possible resolution of this matter, makes it possible for us to say that the change can be effected with no impact on the normal flow of applications and certainly no cost to the Government or to the students involved in terms of any change that now takes place.

Your foresight in doing the extra work that was necessary to set up this double entry system, if we can refer to it as that, indeed was an indication of your faith in the system and the administration. It is kind of nice for us to see our friends over there win one.

As I noted we may have to legislate rather quickly with respect to the 15 percent limitation, and we are examining with staff and with Senator Pell and his committee on the other side the most appropriate way to do that, the most appropriate vehicle to do it quickly, so that we have no legal questions left to dispose of.

I will take it out of the record, Dick, if you ask me to but I think it is very important also for the committee members to know that an old and dear friend of ours, who is deputy now to Secretary Califano, has been running 24 hours a day on this project back and forth making the case for reconsideration with OMB and others.

Dick Warden, who if you do not know him, is someone you should know as our friend over in HEW and, Dick, some of us from the committee are going to see your old boss Leonard Woodcock in Peking in about 2 weeks and I will be very pleased to tell him about your role in this matter.

If this will get you in trouble at the White House we will take it out of the record.

Mr. BOYER. I might say I have put my black hat on the shelf; I have not destroyed it.

Mr. FORD. Well perhaps you would like to come back with Leo when he tries to explain his new loan program. [Laughter.]

Mr. JEFFORDS. Mr. Chairman, I know everyone else has praised the Commissioner and the Secretary for this action and I just would like to add my own comments. It certainly is a great relief to me to know that this has been done and it restores my faith in the administration on that issue.

Mr. BUCHANAN. Mr. Chairman, I would like to commend the Commissioner for both his leadership and his excellent statement this morning. He said it in words that are good to hear.

I hope you will wait awhile before you put the black hat back on.

Mr. FORD. With that, the committee will very happily adjourn on the matter of the resolution.

[Whereupon, at 10 a.m., the committee was adjourned, subject to the call of the Chair.]

○